87

Sup. Ct. U. S.

SUPREME COURT OF THE UNITED STATES.

No. ~~251~~ 130.

THE UNITED STATES, APP'TS,

vs.

TOMAS PACHECO ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

Aff'd

Jul 20/65

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"Potrero de los Cerritos."

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1 *Transcript of the proceedings in case* No. 258.

TOMAS PACHECO *et al.*, claimant, *vs.* THE UNITED STATES, defendants. } For the place named "Potrero de los Cerritos."

2 *Index to proceedings before board of U. S. Land Comm'n.*

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on this thirty-first day of May, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Tomas Pacheco *et al.* for the place named "Potrero de los Cerritos" was presented, and ordered to be filed and docketed with No. 258, and is as follows, to wit:

(*Vide* page 2 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *Sept.* 3*rd*, 1852.

In case No. 258, Thomas Pacheco *et al.* for the rancho "Potrero de los Cerritos," the deposition of Andres Pico, a witness in behalf of the claimants, taken before Commissioner James Wilson, was filed.

4 (*Vide* page 4 of this transcript.)

SAN FRANCISCO, *Oct.* 11, 1853.

Case No. 258 was submitted on briefs and taken under advisement by the board.

SAN FRANCISCO, *Feb.* 14, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board confirming the claim.

(*Vide* page 42 of this transcript.)

SAN FRANCISCO, *Aug.* 15, 1854.

In the same case, on motion of the U. S. law agent, the following order was made, to wit:

(*Vide* page 48 of this transcript.)

Petition.

To the U. S. land commission for the ascertaining and settling of private land claims in California:

The petition of Thomas Pacheco and Augustin Alviso respectfully showeth, that on the eighth of August, 1840, they made and presented their joint petition to the governor of California, soliciting for themselves the grant of a tract of land near the mission of San José, an accurate description of which will be given hereafter.

5 That on the 29th of November, 1842, Governor Alvarado permitted your petitioners to take possession of the land petitioned for, and to occupy it until the proper steps of securing a formal grant to them could be taken.

That your petitioners having taken possession in 1842, as aforesaid, directed another petition to the governor, Micheltorena, on the 3d of February, 1844, praying that a formal grant should be issued to them.

That in the meantime, and while the proceedings were going on, various other individuals, and especially one Pedro Chaboya, applied to the government for a grant of the land petitioned for by Pacheco and Alviso, aforesaid, and that for the purpose of deciding which of the claimants was entitled to a grant of said land the whole subject was referred to the Tribunal Superior de Justicia del Departamento de Californias, which, after due inspection of all the documents, decided in favor of your petitioners on the 21st of March, 1844. That thereupon, and upon a favorable report made on the subject by the first alcalde of San José, on the 10th of February, 1844, the said Micheltorena, by a deed dated 23rd of March, 1844,

6 declared your petitioners the lawful owners of said land, and directing the proper documents constituting title to be issued to them, and that such grant or title deed was executed.

On your petitioners further say, that all the documents above referred to as their petitions, the references, reports, the various petitions of the customary parties, and the action taken thereupon by the Superior Tribunal de Justicia, then the decree of Micheltorena, a certified copy of the grant and the map of the premises are on file in the archives of California, now in the possession of the surveyor general of the United States of America for the State of California, and that duly certified copies and translations of the same are herewith submitted and prayed to be made part of this petition.

That the original grant and map is in the hands of your petitioners, are ready to be offered in evidence whenever required. And your petitioners further state that said land is situated in the present county of Santa Clara, contains three square leagues of territory, or less, is known by the name of "Potrero de los Cerritos," and

7 bounded as follows:

On the west by the bay of San Francisco; on the north by the "Arroyo de la Alameda;" on the south by the ditch called "Sajon

de los Alisos." And your petitioners further state that they took possession of said land in 1842, aforesaid, and two years before they obtained a formal grant thereof, and that they have been in the quiet and undisputed possession of it since then, being not aware of the existence of any title conflicting with or paramount to their own. They therefore claim to be the original owners of said land, and pray that your honorable body, after due inspection of the documents herewith submitted, will confirm and validate their claim and title thereto.

CLARK, TAYLOR and BECKH, *Att'ys.*

Filed in office May 31, 1852.

GEO. FISHER, *Sec'y.*

8 *Dep. of Andres Pico.*

OFFICE OF THE BOARD OF COM'RS OF CALIFORNIA LAND CLAIMS,
Los Angeles, Sept. 3rd, 1852.

On this day, before James Wilson, one of the commissioners for ascertaining and settling private land claims in California, came Don Andres Pico, a witness produced in behalf of the claimants, Thomas Pacheco and al. whose petition is No. 258 on the docket of the board, and was duly sworn; his evidence, being given in the Spanish tongue, was interpreted by the secretary.

The law agent was notified and did attend.

The law agent of the United States was present by R. Greenhow, esq'r., by consent, and did not object.

Don Andres Pico, offered as a witness in the case of Tomás Pacheco and al., who petitioned for confirmation of rancho Potrero de los Cerritos, who, being duly sworn, testifies and says: I know the rancho Potrero; it is situated to the westward of San José; I have known it since the year 1845. It is and has been occupied by Tomas Pacheco and Augustin Alviso since that time. The improvements on
9 said rancho consisted of two houses and corrals and fences, at that time—when I first knew it. I have been at that place several times during the last six or seven years. It has been constantly occupied by the petitioners, and they have been constantly making additional improvements. They have cattle and horses, and a few sheep. They have about one thousand head of cattle, three hundred horses, and four or five hundred head of sheep. They have had fields under cultivation, and arrangements for irrigation by a wind-mill for pumping water. The cultivation on said rancho is more than a square mile, and it is under very good husbandry. The wind-mill for pumping the water is a powerful one, and offers a great supply of water. The whole claim of the petitioners is enclosed in fence.

ANDRES PICO.

Sept. 3rd, 1852.

Subscribed and sworn to before me.

JAMES WILSON, *Commissioner.*

Filed in office Sept. 3rd, 1852.

GEO. FISHER, *Sec'y.*

10 (1.—S. D. K.)—1844.—*Expediente.*

Promovido por los ciudadanos Tomás Pacheco y Agustin Alviso en pretension del parage conocido con el nombre de Potrero de los Serritos.

(358.)

(2.—S. D. K.)—*Espediente "B."*

S'R GOV'R Y GEFE POLITICO: Agustin Alviso y Tomas Pacheco, vecinos del pueblo de S. José, ante V. S. como mas ayo lugar en derecho acemos presente q'e nos ayamos dueños de una porcion de ganado y caballada algo considerable q'e ñros ancianos Padres acen su reparto de eredad, y al tiempo de recibirla nos encontramos sin parte, en donde poner en separo de aqueya comun mescla de porcioneros para q'e sin menos trabajo puedamos adelantar este ramo y el de agricultura á q'e dedicamos nuestra inteligencia pa. el sosten de ñras crecidos familias q'e gosamos.

11 Puestos en tales reflexiones á q'l indispensablemente debemos atender por lo tanto imploramosia la piadosa consic'a de V. S. nos conceda dos sitios deganado mayor poco mas ó menos segun alcance en las dos rinconadas de cerritos y embarcadero q'e dictaran tales puntos de la Mision de S. José segun calculo de dos leguas mas ó menos, q'e en caso hubiere algun incovent'e para concedernos las dos d'has, rinconadas, y es nos conformamos con la una que—(3, S. D. K.)—es la mas distante del establecimiento y llaman los seritos en hesta nos contraemos à la solicitud de un sitio cullo diseno se acomp'a. Por tanto, A. V. S., rendidamente suplicamos hea propicio una tan notable necesidad q'e se presenta à la benignidad de V. S. y provea à favor gracia y merced, q'e juramos lo necesario, &c., &c., dispensando la falta de papel sellado q'e no lo ay.

Pueblo de S. José Guadalupe y Alvarado Ag'to 8 de 1840.

AGUSTIN ALVISU,
TOMAS PACHECO.

(4.—S. D. K.)

Sello cuarto, dos reales.—Habilitado provisionalmente por
12 la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y cinco.

MICHELTORENA,
PABLO DE LA GUERRA.

MONTEREY, *Feb'o 5 de* 1844.
Ynf'e el S. S'rio de despacho tomando las necesarios y teniendo presentes las representaciones de los S. S. Estrada y Chavolla.
MICHELT'A.

[SEAL.] EX'MO S'OR GOBERNADOR: Tomas Pacheco y Agustin Alvisu, ambos naturales de este departamento, ante la sabia y recta justificacion de V. E. en derecho y como mas haya lugar decimos; que desde el mes de Mayo de 1842, estamos poseendo el terreno conocido con el nombre de Potreros de los Serritos, en donde tenemos ubicada casa, corrales, arboles frutales, dienes semovientes, &ra., &ra., inter corrian los tramites respectivos, segun comprueba el adjunto dqcumento, espedido por el E. S. Gobernador antecesor de V. E.

Por lo espuesto suplicamos à la generosidad y clemencia de V. E. se digne espedirnos el titulo de propiedad, para de este modo
13 trabajar anhelanto sin perjuicio de nuestros intereses P. T. A. V. E. suplicamos encarecidamente se digne proveer como pedimos de lo q'e esperamos recibir gracia y merced, jurando no ser de malicia (5.—S. D. K.) y lo necesario, &ra.

Monterey, Febrero 3 de 1844.

TOMAS PACHECO.
AGUSTIN ALVISU.

Como dispone el E. S. pase la precedente instancia con el docum'to que, acompaña al alcalde 1o del Pueblo de San José para que informe sobre su contenido y todo lo demas que crea conveniente.

Monterey, Febrero 7 de 1844.

MAN'L JIMENO.

Como los suplicantes Tomas Pacheco y Agustin Alvisu manifiestan orden del gobierno anterior pa. poseer el terreno q'e solicitan digo á V. E. q'e soy savedor q'e estos tienen fincas considerables como son; una casa de pared bastante grande, una huerta de arboles frutales, un corral y un crecido numero de ganado y caballada, estos ambos con sus familias habitan en el, sin perjudicar à la mision
14 inmediata ni à nadie. Por lo tanta como (6.—S. D. K.) no aparece en este juzgado constancia que acredite que alguno ha pretendido el terreno q'e se solicita primero q'e los interesados, los considero de mi parte à estos acreedores á ser agraciados antes q'e á algun otro q'e do pida.

Pueblo de S. José, Feb'ro 10 de 1844.

ANTONIO MA. PICO.

MONTEREY, 23 *de Marzo de* 1844.

Vista la peticion con que da principia este espediente, los informes que preceden, con todo lo demas, que se tubo presente y de ver convino de conformidad con los leyes y reglamentos de la materia, declaro a los ciudadanos Tomas Pacheco y Agustin Alvisu, dueños en propiedad del parage conocido con el nombre de Potreros de los Serritos, sirviendo de lindero el saujon de los Alisos por la parte de San José por el norte con el arroya de la Alameda, y por el poniente con la Bahia en estension de tres sitios de ganado mayor poco mas ó menos librese el correspondiente despacho tomese razon (7.—S. D. K.)

en el libro respectivo y dirijase este espediente a la E. asam-
15 blea departamental para su aprobacion el E. S. gobernador general de brigada del ejercito Mejicana, ayudante g'ral de la plana mayor del mismo, gobernador comand'te g'ral é inspector del departam'to de las Californias asi lo mando, decreto y firmo.

8.—S. D. K.

[SEAL.] Habiendo el gob'no concedido á la ciudadanos Tomas Pacheco y Agustin Alvisu el terreno conocido con el nombre de Potreros de los Serritos y mientros tanto se arregla el expediente relativo, pueden los interesados establecer en el fincas y labores no haciendolo con bienes de campo mientros que la mision de S'n José rechea los pocos bienes que pr. alli posteen.

Y para resguardo de los interesados les di el presente en Monterey, á 14 de Mayo do 1842.

ALVARADO.

Otro. El lindero pr. la parte de la mision de S'n José es el saujon de Alisos.

ALISAL, á 29 *de Nov're de* 1842.

Habiendo reunido ya los bienes de campo dispersos en el parage de los Serritos.

9.—S. D. K.

16 Segun en parte q'e dá el encargado de la mision de S'n José pueden los interesados poner alli los suyos y disfrutar de lo completa propiedad del terreno ocurriendo por el titulo el gob'na luego q'e combien las presentes circunstancias de la capital.

ALVARADO.

10.—S. D. K.

El ciudadano Manuel Micheltorena, general de brigada del ejercito Mejicano ayudante general de la planos mayor del mismo gobernador comandante general é ynspector del departamento de los Californias.

Por cuanto los ciudadanos Tomás Pachecos y Agustin Alvisu han pretendido para sus beneficios personales y el de sus familias el parage conocido con el nombre de los Potreros de los Serritos, sirviendo de lindero el saujon de los Alisos por la parte de S'n José, por el norte con el Arroyo de la Lameda, y por el poniente con la Bahia; practicados previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos, usando de las facultades q'e me son conferidos á nombre de la nacion Mejicana he venido en concederles el terreno mencionado declarandoles la propiedad
18 de el por las presentes letras sugetandose á la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes.

1a. No podran venderlo enagenarlo ni hipotecarlo imponer censo vinculo, fianza, ipoteca ni otro gravamen alguno.

2a. Podran cercarlo sin perjudicar las trabecias carminos y servidumbres; lo disfrutarán libre y esclusivamente destinandolo solo al uso ó cultivo.

(11.—S. D. K.)

3a. Solicitarán del juez respectivo que les de la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondrá á mas de las mohoneras algunos arboles frutales ó silvestres de algunas utilidad.

4a. El terreno de que se les hace donacion es de tres sitios de ganado mayor, poco mas ó menos, segun esplica el diseño respectivo. El juez que diere la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

5a. Si contravinieren á estos condiciones perderan su derecho al terreno y será denunciable por otro.

18 En consecuencia mando que teniendose por firme y voledero el presente se tome razon de el en el libro respectivo y se entregue á los interesados para su resguardo y demas fines. Dado en Monterey á veinte y tres de Marzo de mil ochocientos cuarenta y cuatro.

MANUEL MICHELTORENA.
MANUEL JIMENO.

Queda tomada razon de este despacho en el libro de asientos sobre adjudicacion de terrenos valdios á fojas 7.

JIMENO.

(12.—S. D. K.)

Sello quinto—Un real.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey en el departamento de las Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PADRO DE LA GUERRA,
E. S. Gobernador.

[SEAL.]

MICHELTORENA.

Solicita el parage de los Cerritos en la mision de San José.

Monterey Eneno 7, de 1844.

19 Inf'e el S. S'rio del despacho tomando antes los q'e creyese convenientes.

MICHELT'A.

Nicanor Estrada, cap'n de caball'a, perm'te á V. E. hace presente no estar dado el parage nombrado los Cerritos de la mision de San José y conveniendome fundar un rancho suplies á V. E. se me concedo el citado, del q'e acompaño diseño con obligacion de reformarlo pr. no estar vien sacado. Monterey D'bre 28 de 1843.

E. S.
NICANOR ESTRADA.

(13.—S. D. K.)

Como dispone el ex'mo sor gobernador, informe el alcalde primero del pueblo de San José, atando á la parte de Don Agustin Alvisu para que de dusca sus derechos sobre el terreno que se pretende, y con-

cluido que sea vuelva á esta secret'a p'a cumplir con lo prevenido en el superior decreto de hoy.

Monterey, 7 de Enero de 1844.

MANUEL JIMENO.

El R. P. Montro de San José se sirva informar sobre el contenido de la presente instancia y en seguido lo pasará al alcalde de San José segun espresa la antecedente disposicion.

Monterey, 8 de Enero de 1844.

MANUEL JIMENO.

(14.—S. D. K.)

20 Si el terreno q'l ocupa el ciud'o Agustin Alvisu en el parage nombrado los Serritos lo disputa ó no segun ley yo no lo he podido averiguar; mas si asi no fuere creo q. en vez de cederselo á otro devevolver adonde pertenece q'l es á esta mis'n fundado en lo que, como hice presente al ex'mo Sór G'ral D. Man'l Micheltorena, carecia esta d'ha mision del terreno absolutamt'e indispensable para mantener los bienes semovientes y ubicar sus labores &rá, pues se halla toda rodeado de ranchos en los terrenos que ella mismo tenia y sus linderos estan á una muy pegueña distancia como los mismos colindantes pueden mejor afirmarlo. Es cuanto tengo q. informar sobre el particular.

Mision de S. José, En'o 29, de 1844.

El terreno q'l el suplicante solicita esta poreido p'r Dn. Agustin Alvisu y Dn. Tomas Pacheco con orden y permiso del ex'mo Sór Gobernador, q'lera Dn. Juan Bautista Alvarado cuyo terreno esta fincado con una grande casa de pared, una huerta de arboles
21 frutales, y existen en el un crecido numero de bienes semo-

(15.—S. D. K.)

vientes. Este segun visiblemente estoy impuesto é informado no perjudica á la mision de S. José, ni anadie, y p'r esto considero á los q'l lo poseen acrederos á la gracia de concesion en propiedad antes q'l á alguno otro, q'l los solicite.

Pueblo de S. José, En'ro 31 de 1844.

ANTONIO M'A PICO.

Ex'mo Sor Gobernador:

El terreno que pretende el Sór Capitan Don Nicanor Estrada, está ocupado con bienes y casa por los ciudadanos Tomas Pacheco y Agustin Alvisu, á quienes se les dió una licencia provisional por el gobierno, mientras corria sus tramites el espedt'e respectivo, y aunque este no ha llegado á la S'ria, pero tienen ya derecho al terreno de los Serritos al que pienso no ha lugar á la solicitud del mencionado Sor Estrada; mas V. E. dispondrá lo conveniente.

Monterey, Febrero 5 de 1844.

MANUEL JIMENO.

(16.—S. D. K.)

MONTEREY, *Feb'o 5 de* 1844.

22 Pase al S. Estrada p'a q'l impuesto digo lo q'l crea conveniente.

MICHELT'A.

E. S. Gobernador:

En cumplimt'o del sup'r decreto de V. E. le manifiesto que el sr. secret'o Dn. Manuel Jimeno informa contrario de lo que sabe, pues tendrá pres'te dicho sr. haberme representado en la oficina un esped'te que sin orñ de archivar ni decreto de tramites, se hayaba en dicho archivo firmado por los S. S. Pacheco y Alvisu, y como el Sr. Jimeno informo á V. E. de no haber llegado á la s'ria el esped'te derestos S. S. quiero acreditar lo contrario á su informe y que se de á los espe-

(17.—S. D. K.)

dientes el lugar que legalmt'e les pertenece. El Sr. Jimeno me advirtio que los S. S. Pacheco y Alviso tenian licencia por el gobierno para establecerse en el pretendido parage los Serritos pero anteced'te en la oficina.

Si. por lo espuesto ante V. E. el presente tubiere algun derecho, yo lo cedo à favor del Sr. Chavolla á quien mas que á mi le pertenece en justicia, como lo hara presente á V. E.

Monterey, Feb'o 9 de 1844.

23 NICANOR ESTRADA.

Ex'mo Sor Gobernador:

Como el Sr. Capitan D'n Nicanor Estrada, ha querido meterse en lo que no sabe ni entiende, por esta razon esplallé mi informe el dia de hayer ante V. E. mismo p'a q'l se impusiese del negocio, y se me ahorrara contestar prolijamente al escrito del d'ho Sor Estrado.

Monterey, 6 de Febrera de 1844.

MAN'L JIMENO.

[Here follows sketch marked 18.—S. D. K., page 23.]

25 (19.—S. D. K.)

Sello quinto, un real.—Habilitado provisionalmente por la aduana maritima del puerto de Monterey en el departamento de las Californias, para el año de mil ochocientos quarenta y tres.

MICHELTORENA.
MANUEL CASTANARES.

[SEAL.]

Ex'mo Sor Gobernador:

MONTEREY, *Feb'o 5, de* 1844.

Inf'l el S. S'rio del despacho tomando antes los q'l crea necesarios.

MICHELT'A.

Pedro Chabolla, natural de la Alta California y residente en el Pueblo de San José de Guadalupe ante V. E. con el mayor respecto comparesco y digo. Que habiendo solicitado del superior gobierno depart-

am'tal el parage nombrado los Serritos pertenecientes al terreno de la mision de S. José, cuya peticion hise en el año de 839; y los papeles q'l en esa f'ha se practicaron fueron traspapelados en la s'ria de gobierno en donde no pue posible se me entregaron pr. mas diligencias que hice, y resultando de aqui mi d'ro perjudicado pr. haber sido agraciados otros individuos, que aunque tengan meritos
26 pa. ello; mas no por esto creo q'l deban ser postergados mi largos y dilatados servicios ql. con honor y sin reproche de mis gefes tengo prestado ó mi patria, en lo ql. ella me has ocupado. De aqui es sor ex'mo ql. a la vez me veo impulsado á representar ante la recta (20.—S. D. K.) justificacion de V. E. acompañando los unicos documentos ql. son copias de los originales y de un certificado ql. el. juez constitucional de este pueblo me dio en ese tiempo de confession ql. mis referidos papeles se perdieron. De mi pretension de ql. bago merito; tambien debe haver alguna noticia en la mision de S. José pr. el informe ql. alli se pidio pr. el gob'no y yo suplico á V. E. se digne mandar pedir los informes ql. crea pistos y convenientes pa. ql. mi d'ro sea atendido; pues yo he sido el primer solicitante ql. he pedido el punto de los Serritos. Por tanto A. V. E. ruego, pido y suplico ql. en obsequio de la justicia se digne V. E. atender esta mi solicitud. Juro (21.—S. D. K.) no ser de malicia &ra.

Pueblo de S. José, Dec're 18 de 1843.

PEDRO CHABOLLA.

27 Como dispone el ex'mo sór gob'dor pase la presed'te inst'a al juez 1o del pueblo de San José p'a que informe lo que sepa sobre el particular.

Monterey, 5 de Feb'ro de 1844.

MAN'L JIMENO.

Como este juzgado no tiene conocimiento pr. no aparecer en el archidel mismo documentos que acreditan la solicitud de D'n Pedro Chabolla y tambien como consta ql. los S. S. Tomás Pacheco y Augustin Alvisu estan poseendo el terreno y tienen en el fincas de algunos costos y que tambien manifiestan lisencia (22.—S. D. K.) del gob'no pa. haber emprendido sus fincas no encuentro que otro informe á mas de este ql. dar al interesado y si piensa ql. el Sor. Alvarado puedos hacerlo; pues es quien gobernaba en el tiempo en ql. este Sor Chabolla hizo en solicitud segun dice.

Pueblo de S. José, Feb'ro 10 de 1844.

ANTONIO MA. PICO.

(23.—S. D. K.)

Sello cuarto, dos reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey en el departm'to de las Californias para los años
28 de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.
PABLO DE LA GUERRA,
Interino.
GUILL'O ED'N HARTNELL.

MONTEREY, *Feb'o* 13 *de* 1844.
Como lo pide evacuen los informes las personas citadas.
MICHELT'A.

[SEAL.] E. S. GOBERNADOR: Pedro Chabolla hijo del pueblo de San José y becino del mismo ante V. E. hace presente haber solicitado el parage de los Serritos de Sñ. José el 3 de Feb'o de 832; y como hay corre tramites un esped'te posterior al uno favorecido por los informes del sr. secretario y juez del pueblo, deseoso de que V. E. haga que se tomen los necesarios podran darlos los S. S. José Ma. Castañares, D'n Ant'o Osio y juez del pueblo en ese año D'n José Noriega que vive en dicho pueblo y tomados que sean estos verá V. E. mi berdad y justicia que me asiste. El administrador que fuede la mision de Sn. José D'n José Anto. Estrada tambien (24.—S. D. K.) podrá informar todos con imparcialidad, gracia que espero de V. E.

Monterey, Feb'o 12 de 1844.

PEDRO CHABOLLA.

29 Digo yo el abajo firmado que en el mes de Abril de 1840, vi un expediente promovido pr. D'n Pedro Chaboya en solicitud del parage nombrado los Serritos como à tres o cuatro leguas de la mision de S. José cuyo espediente fué en dicho tiempo á que informava el sor adm'r de aquel establecimento. Ya pedimento del Sor Chaboya, firmo esta en Monterey, á 14 de Feb'o de 1844.

ANTONIO MA. PICO.

El ql. subscribe en cump'to del sup'r decreto que corre al margen de esta solicitud, hace presente. Que en al año de 1841 me bio D'n Pedro Chabolla pa. ql. agenciase del S. Ex. Gob'r D'n Juan B'ta Alvarado el pronto y favorable despacho de un espedi'te suyo ql. estava corriendo tramites desde 832, en solicitud de el terreno conocido pr. los Serritos, cuyo asunto no supe su paradero pr. ocuparme yo en mys asuntos privados J. pa. que obre los efectos ql. haya (25.—S. D. K.) lugar firme esta en Monterey, á 14 de Feb'ro de 1844.

JOSÉ M'A CASTANARES.

MONTEREY, *Feb'o* 15 *de* 1844.

Pidiendo el interesado vervalm'to al gob'o informar tambien
30 los M. M. R. R. P. P. de los misiones de Santa Clara y San José se serviran hacerlo sus reverencias.

MICHELT'A.

EX'MO SOR GOBERNADOR: Consiguiente al superior decreto ql. antecede en el asunto ql. se versa entra los S'res Pedro Chabolla y Agustin Alvisu, dirè brevemente; que el prim'o sé que con mucha anterioridad al segundo solicito el parage de los Serritos perteneciente à la mision de San José. Asi mismo en fin del año de 842, que se hallaba de mayordomo en la mision de San José, Ag'n Alvisu metio ganado en compañia de Tomas Pacheco en d'ho parage de los Serritos; mas D'n José Ant'o Estrada q. estaba de encargado en la mision, V. S. mando sacar el ganado, pues solo tenian licencia pa. sembrar en d'ho sitio. En fin del mismo año referido en el mes de Oct'e ya el Sor Agustin Alvisu, intento fabricar casa en el mismo

parage, y el Sor su Padre D'n Ygnacio Alvisu, encargado de esta le dio gente de la mision quiza ocho ó nueve hombres pa. (26.—S. D. K.)
el efecto. En el siguiente año de 843, se dijo pr. algunos
31 (no sé con ql. fundam'to) ql. los S'res Alvisu y Pacheco habian
ocurrido à Monterey para practicar los diligencias del sitio mencionado y sacar sus papeles; pero de lo ql. si no tengo dado ql. el Sor Chavolla las ha practicado con mucho tiempo ant'r tanto por lo ql. afirman los Señores Osio y Castañares, como tambien por ql. el prim'o en Junio del año pasado referiendome los movimientos y cuestiones q. le han ocurrido con respecto al sitio ql. tiene à la otra parte del puerto de San Fran'co en la punta de reyes, se toco el punto presente del Sor Chabolla, y en sustancia me dijo que un espediente q. se hallaba corriendo los tramites de estilo sin saberse como, ò de que modo (espresiones su yas) de la noche à la mañana intempestivamt'e se habia perdido.

Es cuanto tengo el honor de informar a V. E en este asunto.

Sta. Clara, Feb'ro 27, de 1844.

JR. JENNEN'O VASQ'S DEL MEREAO.

(Here follows another map or sketch, marked 27.—S. D. K., page 31.)

32

33 (28.—S. D. K.)

El que se subscribe certifica que siendo alcalde constitucional de pueblo se presento D. Pedro Chaboya un escrito con que acompañaba un diseño solicitando los Serritos de San José, cuyo escrito le bolbi para que se dirihiera al gobierno del departamen to àquien correspondia por ser terreno de mision, abiendo locurrido esto à principios del año de 1839 y para que conste à pedimento del ynteresado doy esta en el pueblo de San José.

(29.—S. D. K.)

M. Y. A.

Pedro Chaboya ante V. V. S. S. como mas haya lugar, comparece y dice; que hallandome con algunos bienes y no teniendo una finca à propiedad donde establecerme, suplico á V. V. S. S. se sirvan concederme el sitio, llamado los Serritos de S. José el cual consta segun el diseño que acompaño de tres sitios poco mas ó menos. Por tanto A. V. V. S. S., suplico se dignen aceder á esta mi solicitud en lo (30.—S. D. K.) que recibiré gracia y merced.

Pueblo de S. Jose, Feb'o 3 de 1839.

PEDRO CHABOYA.

(Here follows map marked 31.—S. D. K., page 33.)

34

85 32.—S. D. K.

Tribunal Superior de Justicia Del Departamento de California.

Ex'ma Sor. : Con f'ha 14 del presente dice á este superior tribunal el juez de 1a. instancia lo que copio.

"Cumpliendo por lo dispuesto p'r ese superior tribunal en la nota q'e con f'ha 13 del presente se sirvio dirigirme fueron presentes en este de mi cargo los C'nos Tomas Pacheco y Pedro Chabolla a quienes hice saber la referida disposicion é impuesta de ello dijo el segundo, no tener mas comprovantes q'e presentar q'e los q. á la f'ha obran, y el primero presentó una solicitud firmada por el y D. Agustine Alvisu y un diseño p'r los q'e solicitan en Ag'to de 1840, ante el ex'mo S'r Gobernador del departamento el terreno q. es en cuestion. Todo lo que tengo el honor de decir á V. S. p'a q'e se sirva poner lo en el conocimiento de ese sup'r trib'l de Cohienda, los documentos con q'e me acompaño su citada nota, adjuntos los q'e antes (33.—S. D. K.) he dicho.

Monterey, *M'zo* 21 *de* 1844.

Como opina el Superior Tribunal de justicia de este departam'to.

Michelt'a.

36 Y habiendo visto y examinado los referidos documentos, y no aparecer agregados mas comprovantes q'e la instancia y diseño de Alviso y Pacheco acordo este sup'r trib'l q. se remitiesen á V. E. p'a q'e mande estender el titulo de propiedad a quien tubiere á vien, siendo la opinion del mismo sup'r trib'l q'e como no hay espediente algun formado en solicitud del terreno en cuestion p'r ninguna de los partes, y si existir mi d'ho de primer ocupante, no habiendo el de un primer pitidor, como Pacheco tubiese aquel con justo titulo y buena fée, (pues no se prueba lo contrario,) es acreedor á q'e en pisticia se declare á su fabor la propiedad en el diseño q. acompaña, teniendo en consideracion á lehavolla p'a ser preferido en lo sobrante.

Lo q. tongo el honor de decir á V. E. como resultado del examen q. se hiso de los referidos documentos q. (34.—S. D. K.) acompano ; y como acordado asi p'r este sup'r trib'l.

Sirvase V. E. admitir los protestas de mi respecto y consideracion. Dios y libertad. Monterey, M'zo 21 de 1844.

JUAN MALARIN.

37 Ex'mo S'r Gobernado lel Departmento.

Office of the Surveyor General of the United States for the State of California.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such, now having in my office and under my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the thirty-four preceding and hereunto annexed pages of tracing paper, numbered from one to thirty-four, inclusive, and each of which is identified by my initials (S. D. K.,) exhibit true and ac-

curate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially and affixed my private seal (not having a seal of office) at the city of San Francisco, Cal., this sixth day of March, A. D. 1852.

SAM'L D. KING,
[SEAL.] *Su'v'r Gen'l Cal.*

Filed in office May 31st, 1852.

GEO. FISHER, *Sec'y.*

38 *Translation of espediente.*

1844.

Record of proceedings at the instance of the citizens Thomas Pacheco and Augustin Alviso, soliciting the location called Potreros los Serritos.

358.

Sir Governor and political chief:

Agustin Alviso and Thomas Pacheco, residents of the pueblo of San San José, in the best legal form represent to your honor that we are the joint owners of a considerable number of cattle and horses, which forms a part of our inheritance from our late parents, and at the time of receiving the same we found ourselves without any place to put them separating them from this common mixture of shareholders; in order that with less labor we may be enabled to promote this pursuit and that of agriculture, to which we devote our attention in order to sustain our increased families, which we must indispensable provide for, we implore your honor's charitable consideration
39 to grant us two square leagues, a little more or less, as it may be comprised between the two angles of the Cerritos and Embarcadero, which points, according to my estimate, are two leagues, more or less, distant from the mission of San José. In case you should have any inconvenience in granting us the two said angles, we will be content with the one that is most distant from the establishment and called Los Cerritos, and will confirm our solicitation to one square league, the sketch of which is annexed. Therefore we humbly pray that your honor would favorably consider a case of such urgent necessity, addressed to the benignity of Y. H. We make the necessary oath, etc., excuse the want of sealed paper, of which there is none.

Pueblo S. José Guadalupe y Alvarado.

[SEAL.] AUGUSTIN ALVISO.
THOS. PACHECO.

Excellent Sir Governor:

We, the citizens Tomas Pacheco and Augustin Alviso, both natives of this department, before your exc'l'y's wise and justice, in the most legal and proper way say: that since the month of May,

1842, we have been possessed of the land known by the name of "Potrero de los Cerritos," where we have built a house, cor-
40 rals, fruit trees, cattle, &c., while the respective procedure is going on, as the adjoined document issued by the E. governor your predecessor proves. Accordingly we apply to your ex'cy's generosity and clemency to be pleased to issue to us the title deed in fee, in order thereby to work anxiously without prejudice to our interests. Therefore we earnestly pray that your exc'y will be pleased to provide for what we ask, by which we expect to receive favor and justice, swearing there is no malice in it and to what else is necessary.

Monterey, Feb'y 3d, 1844.

THOS. PACHECO.
AUGUSTIN ALVISU.

MONTEREY, *February 5th*, 1844.

Let the Secretary of State report, taking necessary information and in order to provide in justice, bearing in mind the representations of the citizens Estrada and Chaboyo, be borne in mind.

MICHELTORENA.

Agreeably to the disposition of his excellency, let the preceding instrument, with the accompanying document, pass to the 1st alcalde of the pueblo of San José, that he may report upon its contents, and everything else he may think convenient.

41 MANUEL JIMENO.

MONTEREY, *February 7th*, 1844.

As the supplicants, Thomas Pacheco and Augustin Alviso, show order from the former government to possess the land they solicit, I say to Y. E. that I know that these have considerable property, such as a dwelling-house large enough, orchard of fruit trees, a corral, and an increased number of cattle and horses. They both with their families inhabit it, without prejudice to the immediate mission nor to anybody else. Therefore, as it does not appear in this court any proof to show that anybody has solicited the land hereby petitioned for, I consider for my part those meritorious persons to be entitled to the grant rather than any other who may ask it.

Pueblo de San José, February 10th, 1844.

ANTONIO M'A PICO.

MONTEREY, 23*rd March*, 1844.

In view of the petition with which this record of proceeding commences, the preceding reports, with everything else which was borne in mind and was convenient to attend to in conformity with the laws and regulations on the subject, I declare the citizens Tomas
42 Pacheco and Augustin Alviso owners in fee of the location known by the name of "Potreros de los Cerritos," bounded in direction to San José on the Saujon de los Alisos, to the north on the Arroyo de la Alameda, and to the west on the bay, in extent three square leagues, (sitios de ganado mayor,) a little more or less. Let the

corresponding title be issued, enter it in the respective book, and transmit this espediente to the E. departmental assembly for its approbation. The exc't governor brigadier general of Mexican army, adjutant general of the staff of the same, commandant general and inspector of the department of both Californias thus ordered,
[SEAL.] decreed and signed.

The government having granted to the citizens Thomas Pacheco and Augustin Alviso the land known by the name of Potrero de los Cerritos, and while the respective espediente is adjusted and the corresponding title is issued the interested parties can establish the improvements and cultivations, not doing it with cattle until the mission of S. José reduces the few cattle which pasture thereon.

For the security of the interested parties I give them these
43 presents, in Monterey, the 14th of May, 1842.

ALVARADO.

Moreover, the boundary on the side of the mission San José is the Saujon de los Alisos. (Flourish.)

Alisal, 29th November, 1842.

Having already withdrawn the cattle dispersed on the location De los Cerritos, according to the report of the person in charge of the mission of San José, the interested party can there put theirs and enjoy a complete ownership of the land. They shall apply to the government for the title when the present circumstances of the capital shall allow it.

ALVARADO.

The citizen Manuel Micheltorena, brigadier general of the Mexican army, adjutant general of the staff of the same, governor commandant general and inspector of the department of both Californias.

Whereas, the citizens Tomas Pacheco and Augustin Alviso had solicited for their personal benefit of that of their families the place known by the name of Potrero de los Cerritos, to be bounded on the side of the mission of San José by the Saujon de los Alisos,
44 to the north by the Arroyo de la Alameda, and to the west by the bay, after having previously taken the necessary action and made the necessary investigations, according to the requirements of laws and regulations in exercise of the powers vested in me and in name of the Mexican nation, I have concluded to grant them the mentioned land, declaring it their property by the present letters patent, subject to the approbation of the excellent departmental assembly, and under the following conditions:

1st. They shall not alienate or mortgage it, neither to subject it to rent, entail, bond, mortgage, or any other incumbrance.

2d. They may fence it without prejudice to the crossings, roads and servitudes, they will enjoy it freely and exclusively, appropriating it only to the use or culture that best may suit them.

3d. They shall solicit of the respective judge to give them juridi-

cal possession in virtue of this document by whom the boundaries are to be designated, on the extremities of which he will put, besides the landmarks, some fruit trees or wild ones of some utility.

4th. The land granted to them is three square leagues,
45 (sitios de ganado mayor,) a little more or less, as the respective sketch shows. The judge who shall give the possession will cause it measured conformable to ordinance, leaving the surplus that may result to the nation for convenient purposes.

5th. If they should violate these conditions they shall lose their right to the land, and it may be denounced by any other party.

Consequently, I order that these presents, being held as firm and valid, be entered in the respective book and delivered to the interested parties for their security and other purposes.

Given in Monterey on the 23rd of March, 1844.

MANUEL MICHELTORENA,
MANUEL JIMENO, *Secretary*.

This title is entered in the book of entries for adjudication of vacant lands, folio 7.

JIMENO.

EXC'T SIR GOVERNOR: Nicanor Estrada, cavalry capitan, takes the liberty to represent to you, that not being the place called Los Cerritos de la Mission de S'n José, and it suits me to found a rancho.

I pray you to grant me the same, a sketch of which I annex
46 with obligation to amend it, not being well drawn.

Monterey, Dec. 28th, 1843.

NICANOR ESTRADA.

(In the margin.)—I solicit the place of los Cerritos in the mission of San José.

MONTEREY, *January 7th*, 1844.

Let the Secretary of State report, taking beforehand such information as he may believe convenient.

MICHELTORENA.

The excellent governor ordering it, let the first alcalde of the Pueblo de San José report, citing the party Don Augustin Alviso, in order that he may deduce his rights to the land solicited, and when it may be concluded return it to this secretary's office to comply with the directions of the superior decree of to-day.

Monterey, 7th of January, 1844.

MANUEL JIMENO.

The reverend father of the mission San José will please report upon the contents of the proceeding instance, and thereafter let it pass to the alcalde of San José, according to what is set forth in the foregoing disposition.

Monterey, January 8th, 1844.

MANUEL JIMENO.

Whether the land which the citizen Augustin Alviso occu-
47 pies in the place called Los Cerritos is held according to law I have not been able to ascertain, but if such should not be the fact, I believe that instead of ceding it to another it ought to be returned to where it belongs, that is, to this mission, according to what I represented to the E. governor, Man'l Micheltorena, as the land is indispensable for said mission in order to maintain their movables and chattels, and to locate the labors, etc., for it is found all surrounded by ranchos on the lands that the same had, and its limits are still at some little distance, as the bordering land owners themselves can better affirm.

This is all I have to report on the matter.

Mission of San José, the 29th January, 1844.

The land which the petitioner solicits is possessed by D'n Augustin Alviso and Don Tomas Pacheco, order and permission of the excellent sir governor, who was Don Juan Bautista Alvarado, which land is furnished with a large dwelling-house, an orchard of fruit trees, and there exist on it a considerable of movable property. This after what I am already instructed and informed does not pre-
48 judice the mission of San José nor anybody else, and therefore I consider those that possess it entitled to the favor of concession of the ownership before anybody else that may solicit.

Pueblo de San José, 31st of January, 1844.

ANTONIO M. PICO.

EXCELLENT SIR GOVERNOR: The land which Captain Nicanor Estrada solicits is occupied with cattle and a house by the citizens Thomas Pacheco and Augustin Alviso, to whom was given a provisional license by the government, while they might forward the respective espediente, and though this has not reached the secretary's office, yet they have already right to the land of the Serritos, to which I think the solicitation of mentioned Mr. Estrada is out of place. But you will determine what is convenient.

Monterey, February 5th, 1844.

Let it pass to Mr. Estrada, that he advisedly can say what he thinks convenient.

MICHELTORENA.

49 EXCELLENT SIR GOVERNOR: In compliance with your excellency's superior decree, I show you that the Secretary Don Manuel Jimeno reports contrary to what he knows, since said gentleman will be aware that he presented to me in the office an espediente, which (without order to be entered in the archives,) (*without order to be entered in the archives*, nor decree of procedure) was in said archives signed by Messrs Pacheco and Alviso, and as Mr. Jimeno informs you the espediente of said gentlemen has not reached said secretary's office, I want to prove the contrary to his report, and that the espediente be given the place which legally belongs to them. Mr. Jimeno advised me that Messrs Pacheco and Alviso had license from the government to establish themselves on the solicited

location Los Serritos, but without any antecedent in the office. If after what is hereby represented I shall have any right, I cede it in favor of Mr. Chabollo, to whom more than to me it justly belongs, as he will make obvious to you.

Monterey, Feb'y 5th, 1844.

NICANOR ESTRADA.

50 EXCELLENT SIR GOVERNOR: As Captain Nicanor Estrada has chosen to meddle with what he neither knows or understands, for the reason I yesterday laid before you my report in order that you could judge in the case, and therefore I refrain from replying minutely to the writing of said Mr. Estrada.

Monterey, 6th of February, 1844.

MAN'L JIMENO.

EXCELLENT SIR GOVERNOR: I, Pedro Chabollo, a native of Upper California, and resident in the pueblo of San José de Guadalupe, appear before Y. E. with the utmost respect and say, that having solicited of the superior departmental government the location called Los Cerritos, appertaining to the land of the mission of San José, which petition I made in the year 1839, and the papers which under that date were made out were mislaid in the secretary's office of government, where it was not possible to deliver them to me for further proceedings which I instituted, and herefrom resulting a prejudice to my right, because having been granted to the other individuals who may possibly have merited, though I do not be-
51 lieve it. Therefore my long and numerous services, which with honor and without reproach to my chief I have done to my fatherland, which has kept me occupied in its service, ought not to be left out.

Therefore it is, my lord, that at the time I saw myself impelled to represent before your excellency right justice, forwarding the only documents that are copies of the originals, and of a certificate which the constitutional judge of this pueblo gave me in that time of confusion that my said papers were lost. Of my meritorious pretension there ought also to be some notice in the mission of San José, by the report which there was asked by the government, and I pray Y. E. to be pleased to order the reports which you believe just and convenient, in order that my right may be attended to, since I have been the first supplicant that has asked the Potrero de los Serritos. Therefore I pray, ask, and request that in obedience to justice Y. E. will be pleased to attend to this my solicitation. I swear there is no malice in it.

Pueblo de San José, December 18th, 1843.

PEDRO CHABOLLO.

52 MONTEREY, *Feb'y 5th*, 1844.

(In the margin.)—Let the secretary of state report, previously taking others, if he believes them necessary.

MICHELTORENA.

Agreeably to the disposition of the exc'l sir governor, the present instance passes to the 1st judge of the pueblo of San José, that he may report what he may know about the matter.

Monterey, 5th of February, 1844.

M. JIMENO.

As this court has no knowledge on account of there not being found in the archives of the same any documents that insure the solicitation of Don Pedro Chabollo, and as it neither appears that Tomas Pacheco and Augustin Alviso are possessing the land and have on it property of some cost, and there neither appearing any license from the government to place their property, I do not find another report besides this to give to the interested party, and I think Mr. Alvarado can do it, since it is he who governed at the time when this Mr. Chaboyo made his solicitation, as he says.

53 Pueblo de San José, Feb'y 10th, 1844.

ANTONIO M. PICO.

Pedro Chavallo, a native of the pueblo of San José, and resident of the same, represents before you to have solicited the place De los Serritos de San José, the 3d of February, 1839, and as there is an espediente in process subsequently to the one favored by the reports of the secretary and judge of the pueblo, desirous that you may have the opportunity to take the necessary reports, the following gentlemen will be able to give them, namely, Don José Ma. Castañares, D. Antonio Osio, and judge of the ——— in that year, Don José Noriega, who lives in said pueblo, and when these are taken, Y. E. will see my truth and justice, which is in my favor. The administrator of the mission of San José, who was Don José Ant'o Estrada, also will be able to report everything with impartiality, a favor I expect from your E.

Monterey, Febr'y 12th, 1844.

PEDRO CHABOLLO.

MONTEREY, *Feb'y 13th*, 1844.

(In the margin.)—As prayed for, let the mentioned persons report.

MICHELTORENA.

54 I, the undersigned, say, that in the month of April, 1840, I saw an espediente, forwarded by Don Pedro Chaboya, in solicitation of the place called Los Serritos, about 3 or 4 leagues from the mission of S. José, which espediente was in the said time in which the administrator of said establishment reported. At the request of Mr. Chabollo I sign this in Monterey, 14th of February, 1844.

ANTONIO M. OSIO.

The undersigned, in compliance with the superior decree in the margin of this solicitation, represents: that in the year 1841 Don Pedro Chabollo called on me in order to solicit from the excellent governor, Don Juan Bautista Alvarado, the prompt and favorable dis-

patch of an espediente, the procedure of which was going on since 1839, in solicitation of the land known as Los Serritos, the result of which I was not aware, as I had to attend to my own business; and that it may answer the suitable purposes I sign this in Monterey, 14th of February, 1844.

JOSE MA. CASTAÑARES.

Monterey, Feb'y 15th, 1854.

55 In virtue of the superior decree that precedes in the case between Pedro Chabollo and Augustin Alviso, I will say briefly that I know that the first named, long time before the second, solicited the location Los Serritos, belonging to the mission San José, and also that at the end of the year 1842 was mayor domo in the mission San José Augustin Alviso, who placed cattle, in company with Thos. Pacheco, in the said location, Serritos, but D. José Anto. Estrada, who was administrator in the mission of San José, gave order to take the said cattle away, as they had only license to sow in the said location. At the end of the said year referred to, in the month of October, S. Augustin Alviso intended to build a house on the said location, and his father, D. José Alviso, administrator of the same, gave him about eight or nine laborers from the mission for that purpose. In the next year, 1843, it was said by somebody, I don't know on what foundation, that Mr. Alviso and Pacheco had applied to Monterey to have the documents relative to the said location in order, but of this I am sure that Mr. Chaboya had made the same solicitation long before, as much as from what Mr. Osio and
56 Mr. Castañares affirm, as also because the first named, in June last year, referring to me the difficulties which had accrued to him with respect to the location which he has in another part, San Francisco, in the Punta de Reys, the conversation turned upon the present case of Chabollo, and the substance of what he told me was that an espediente which was under process, without knowing how and in what manner, (his own expressions,) was suddenly lost. This is all I have the honor to inform Y. E. about the case.

Santa Clara, Febr'y 29th, 1844.

JESUS MARIA VASQUES DEL MERCADO.

The undersigned certifies that, being constitutional alcalde of this pueblo, Don Pedro Chaboya presented a writing, accompanied by a sketch, soliciting Los Cerritos de San José, which writing I returned to him, in order that he could have it directed to the government of department, which correspond, being mission land. This having occurred in the beginning of the year 1839, and to attest it, at the request of the interested party, I give this on the pueblo of San José.

57 ILLUSTRIOUS AYUNTAMIENTO: I, Pedro Chaboya, appear before your excel. in the best manner, and say that finding myself possessed of some movables, and not having any estate or property where to establish myself, I pray you to be pleased to grant me site called Los Serritos de S. José, which, by the accompanying sketch,

granted to the citizens Thomas Pacheco and Augustin Alviso the land known by the name of Potrero de los Cerritos, while the respective espediente is adjusted and the title is issued, "they may improve and cultivate the land, but shall not put cattle on it until the stock of the mission is withdrawn." The second document, dated 29th of November, 1842, reciting notice that the cattle had been withdrawn, declares that the interested party can't put theirs and enjoy a complete ownership of the land. They shall apply to the government for the title, when the present circumstances of the capital shall allow it.

The language of these two documents is such as to show a grant of the land to the claimants, so far as could be done on the part of the governor, and sufficient without subsequent approval for an equitable title. But this document is found in the same espediente with the grant before-mentioned, and comes before us as a part of the
64 same traced copy, and unless there are circumstances connected with it which give it a sanction that the other had not, it must be equally valueless as evidence of a title; but the record itself shows how these two documents became a part of it. They were attached to the petition of Pacheco and Alviso of February, 1844, and with it went into the archives. They were presented as original documents issued by a former governor, the evidence of their right to the land, for which they asked a more formal and perfect title. Thus the record itself shows that these documents had been executed and delivered to the parties in interest, and were retained as evidence of their right in further proceedings. The record, moreover, shows that they were recognized throughout these proceedings as true, genuine, and valid documents, and the rights of the grantees named in them were fully sanctioned. With the espediente of the facts borne upon the face of the record, I think the testimony sufficient to establish a valid, and subsisting equitable title in the claimants as against the Mexican government under the concession by Alvarado.

The documents pertaining to a subsequent concession by
65 Micheltorena, not being substantiated by proof, cannot be considered as evidence, and cannot, therefore, aid in the description of the premises. We must resort to the documents connected with the grant by Alvarado for a description of the premises. The premises, as described in the grantees' original petition, consisted of two square leagues, a little more or less, as it may be comprised between the two angles of the Serritos and Embarcadero. And the petitioners state a desire that if both of said angles cannot be granted, that the one most distant from the mission called Los Cerritos, of the extent of one square league, may be given, and reference is made to a map annexed. The concession is of the place known by the name of Potrero de los Cerritos. A note at the bottom of the grant states that "the boundary on the side of the mission of San José is the Saujon de los Alisos. The map referred to shows that the land solicited is situated on the estero or bay, which bounds it on the west, extending to the Embarcadero, at the mouth of the Alameda Arroyo on the north, and having that creek for the northern

boundary of the premises; on the south the Saujon de los
66 Alisos is defined as the limit. The rear or eastern line is not described in the grant, but as it must evidently commence at the bay, and as the two sides, or the north and south are defined, there is no difficulty in establishing the rear line parallel with the front at such a position as will give the requisite quantities of land. The quantity was, I think, from an examination of all the papers, two square leagues, embracing the entire premises for which the original application was made.

The proof is clear in the case from the record of evidence, and the deposition of Andres Pico, that the applicants went into possession of the premises about the time of their first proceedings to obtain a grant; that they built houses on the place and lived there with their families, and have continued there ever since, making extensive improvements and devoting the place to agriculture. A decree of confirmation will be entered for two square leagues of land described as above mentioned.

Confirmed.

Filed in office Feb'y 14th, 1854.

67 GEO. FISHER, *Sec'y.*

Decree.

THOMAS PACHEO and AUGUSTIN ALVISO
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is hereby made is that known by the name of Potrero de los Serritos, now in the occupancy of said claimants, situated in the county of Santa Clara, and bounded as follows, to wit: on the west side by the estero or bay, on the north side by the Arroyo de la Alameda, on the south and towards the mission of Santa Clara by the Saujon de los Alisos, and on the east, or rear side, by line parallel to the front side, on the estero or bay,
and at such distance from it as to include in said boundaries
68 two square leagues of land, reference also be had for the location of the said premises to the maps in the traced copy of the espediente filed in this case. The land hereby confirmed contains two square leagues of land and no more.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office Feb. 14th, 1854.

GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the northern district of California,

it is hereby ordered that two transcripts of the proceedings and of the decisions in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern
69 district of California, and the other be transmittted to the Attorney General of the United States.

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing forty-seven pages, numbered from one to forty-seven, both inclusive, to contain a true, correct and full transcript of the record of the proceedings and of the decision of the said board of the documentary evidence and of the testimony of the witnesses, upon which the same is founded, on file in this office, in case No. 258, on the docket of the said board, wherein Thomas Pacheco *et al.* are the claimants against the United States for the place known by the name of "Potrero de los Cerritos."

[SEAL.] In testimony whereof I hereunto set my hand and affix my seal (not having a seal of office) at San Francisco, Cali-
70 fornia, this thirtieth day of October, 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Endorsed: Filed November 2d, 1854.

JNO. A. MONROE, *Clerk.*

71 *Order permitting further testimony to be taken.*

At a special term of the district court of the United States of America for the northern district of California, held at the court house in the city of San Francisco, on Tuesday, the 14th day of November, in the year of our Lord one thousand eight hundred and fifty-four.

Present: the honorable J. S. K. Ogier, district judge.

THE UNITED STATES *vs.* TOMAS PACHECO *et als.*, claimants. } No. 119.

On motion of counsel for the claimants in the above cause, and with the consent of the U. S. dist. att'y, given in open court, ordered that leave be given to all parties to take further evidence in this cause upon reasonable notice before a comm'r of this court.

Endorsed: Filed Nov'r 14, 1854.

JNO. A. MONROE, *Clerk.*

72 *Dep. of Wm. Cary Jones.*

U. S. dist. court, northern dist. of California.

THE UNITED STATES
vs.
TOMAS PACHECO *et als.*, claimants.

Deposition taken by consent in the above cause before me, Alex. M. Schell, U. S. comm'r, on the 14th day of November, A. D. 1854.

William Cary Jones, being duly sworn on behalf of claimants, deposes and says:

Question 1st. What is your name, age, and place of residence?

Answer. My name is Wm. Cary Jones; my age is thirty-eight, and I reside in San Francisco, California.

Question 2nd. Look upon the document now here shown to you, marked Exhibit No. 1, A. M. S., and annexed to this deposition, and state all that you know in regard to it.

Answer 2nd. This document was delivered to me by Mr.
73 Jeremiah Clarke, member of the bar in this city, about fifteen days ago, and has been since that time in my possession. Mr. Clarke was originally employed as counsel by the claimants in this cause before the U. S. land commission, and the said claim was presented before the commission by the law firm of which Mr. Clarke was a member.

Subsequently the law firm of which I was a member (namely, Jones, Tompkins and Strode) were also employed by the claimants, and the case was prepared by me for trial while the commission was sitting at Los Angeles, in the fall of 1852, with the exception of the production in evidence of this original title, which Mr. Clarke informed me he had left with his papers at San Francisco. Subsequent to the return of the commission to San Francisco, both Mr. Clarke and myself were absent in the Atlantic States, and the cause, by mutual inadvertence, was submitted to the commission without the presentation in evidence of this original evidence and was decided by said commission. After my return to California I learned this fact, and on the return of Mr. Clarke demanded this paper of him and he delivered it to me accordingly, and it has been in my possession to this
74 moment.

Question 3rd. Are you acquainted with the handwriting of Manuel Jimeno? If yea, state your means of knowledge, and look upon the said document marked Exhibit No. 1, A. M. S., annexed to this deposition, and state whether or not the signature of the said Jimeno on said document are his true and genuine signatures.

Answer 3rd. I am acquainted with the handwriting of Manuel Jimeno from having frequently seen him write, and from seeing pub. documents with his signature. His signatures where they occur on Exhibit No. 1, A. M. S., are his true and genuine signatures.

Question 4th. Is Manuel Jimeno living or dead?

Answer 4th. He is dead.

WM. CAREY JONES.

Present: the U. S. dist. att'y, by A. Glassell, and the counsel for claimants.

Sworn to and subscribed before me this 14th day of November, 1854.

ALEX. M. SCHELL, *U. S. Com'r.*

75 *Exhibit A. M. S. No.* 1, *attached to dep. of Wm. C. Jones.*

Sello segundo, cuatro pesos.

Habilitado provisionalmente por la aduana maritima del puesto de Monterey, en el departamento de las Californias, para los años de mil ochocientos y cuatro y mil ochocientos cuarenta y cinco.

MICHELTORENA.

[SEAL.] PABLO DE LA GUERRA.

El ciudadano Manuel Micheltorena, general de brigada del ejercito Mejicano, ayudante general de la plana mayor del mismo, gobernador comandante general é yn̄spector del departmento de las Californias: Por cuanto los ciudadanos Tomás Pacheco y Agustin Alviso hau pretendido para sus beneficios personales y el de sus familias el parage conocido con el nombre de Potrero de los Serritos, sirviendo de lindero el Saujon de los Alisos para la parte de San José, por el norte con el Arroyo de la Lameda y por el poniente con la Bahia; practicadas previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos; usando de las facultades que me son conferidas á nombre de la nacion Mejicana he benido en
76 concederles el terreno mencionado declarandoles la propiedad de él por las presentes letras; sujetandose á la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1ª. No podran venderlo, enagenarlo, ni hipotecarlo, imponer censo, vinculo fianzo hipoteca ni otro grabamen alguno.

2ª. Podran sercarlo sin perjudicar las travecias caminos y servidumbres; lo disfrutarán libre y esclusivamente destinandolo al uso ó cultivo que mas les acomode.

3ª. Solicitaran del juez respectivo que les dé la posecion juridica en virtud de este despacho por el cual se demarcarán los linderos en cuyos limites pondrá á mas de las mojoneras algunos arboles frutales á silvestres de alguna utilidad.

4ª. El terreno de que se les hace donacion es de tres sitios de ganado mayor poco mas ó menos segun esplica el diceño respectivo. El juez que diere la posecion lo hará medir conforme á ordenanza quedando el sobrante que *que* resulte á la nacion p'a los usos convenientes.

77 5ª. Si contravinieren á estas condiciones perderán su derecho al terreno y será denunciable por otro. En consecuencia mando que teniendose por firme y valedero el presente, se tome razon de él en el libro respectivo y se entregue á los interesados para sus resguardo y demas fines. Dado en Monterey á veinte y tres de Marzo de mil ochocientos cuarenta y cuatro.

MAN'L MICHELT'A.

MAN'L JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro de acientos sobre adjudicacion de terrenos baldios á f's. 7.

JIMENO.

Endorsed: Filed Nov. 15, 1854.

JNO. A. MONROE, *Clerk.*

Translation of the above document (Exhibit A. M. S. No. 1, annexed to dep. of W. C. Jones) can be found at page 43, marked with an asterisk.

78

79 *Dep. of J. Clarke.*

United States district court, northern district of California.

SAN FRANCISCO, *December* 2*d*, 1854.

On this day, before Alex. M. Schell, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Jeremiah Clarke, a witness produced on behalf of the claimant in case No. 119, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California in case No. 258 on the docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present: A. Glassell, who appeared for the U. S. att'y, and J. J. Williams, who appeared for claimants.

Questions by claimants' counsel.

Question 1st. What is your name, age, and place of residence?

Answer 1st. My name is Jeremiah Clarke; I am thirty-eight years of age, and my place of residence is the city of San Francisco, State of California.

80 Question 2nd. Look upon the document now here shown to you, marked Exhibit No. 1, A. M. S, annexed to the deposition of Wm. Carey Jones, heretofore taken in this case, and state whether or not said document was ever in your possession; if yea, how and when it came into, and when and how it left your possession?

Answer 2nd. Said document has been in my possession, although I am unable to state at what time it came into my possession. I was of the law firm of Clarke, Taylor and Beck, who presented a large number of claims before the board of U. S. land commissioners. It was the duty and practice of the junior member of the firm to make an entry, in a book kept for that purpose, of the various documents received by us in support of the claims of claimants, and it is very seldom the case that my own recollection would enable me to say how or when any of these documents were received by the firm. Shortly after this claim was confirmed, I made a careful examination of all the papers and documents relating to land claims in our possession, and which were kept in a trunk under lock and

81 key, and found the document in question, which had got mislaid. I found, upon reference to the book before mentioned, that it had been received by the firm some time previously. The entry had no date, but from the color of the ink I suppose it must have been made a considerable time previous to the decision of the board; and I am of opinion that the said document was in our possession at the time of the filing of the petition before the said board.

Mr. Jones had been employed as counsel in the case, and, it was understood, had purchased the rancho or a portion of it; and the cause being confided to his management may help to account for my oversight in not offering the document in question before said board. After discovering the document I handed it to Mr. Wm. Cary Jones. I do not know that Mr. Cary Jones has any interest in the rancho at present.

J. CLARKE.

Sworn to before me this second day of December, A. D. 1854.

ALEX. M. SCHELL,
U. S. Com'r.

Endorsed: Filed Dec'r 2d, 1854.

JNO. A. MONROE, *Clerk.*

82 *Notice of appeal.*

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Whereas the commission constituted for the purpose of ascertaining and settling private land claims in the State of California, by the act of Congress of the United States of America approved on the 3d of March, 1851, entitled "An act to ascertain and settle private land claims in the State of California," did, on the 14th day of February, 1854, by their decision of that date, decide, in part, against the claim presented by the undersigned to the said commissioners, which claim is No. 258 on the docket of claims before said board, and is for land lying in the said northern district; and the said claimant being desirous that the said district court should review the said decision, now hereby files this notice in the said clerk's office of his intention to prosecute an appeal, as is provided by the 12th section of an act entitled "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the 30th of June, 1853, and for other purposes," which said act
83 was approved on the 31st of August, 1852.

TOMAS PACHECO,
A. ALVISO,
By their counsel, THORNTON & WILLIAMS.

To JOHN A. MONROE, *Clerk, &c., &c.*

Endorsed: Filed February 9th, 1855.

JOHN A. MONROE, *Clerk.*

Notice of Att'y Gen'l.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 17*th January*, 1855.

THOMAS PACHECO
vs.
THE UNITED STATES. } 258.

You will please take notice that in the above cause, decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 28th day of September, 1854, the appeal in the district court of the United
84 States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: Filed Feb'y 20, 1855.

JNO. A. MONROE,
Clerk.

Petition of the U. S.

To the honorable district court of the United States in and for the northern district of California:

THE UNITED STATES, appellants,
vs.
THOMAS PACHECO, *et al.*, appellees. } No. 119.

The petition of the United States, by their attorney, represents: that this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellees was confirmed to the extent of two square leagues, as appears by reference to the records in the case.

That a transcript of the said records was filed in this court
85 on the 2nd day of November, 1854; that a notice of appeal was filed on the 20th day of February, 1855, and that the land claimed lies in the said district.

That the said claim is invalid.

Wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title to be wholly invalid.

Respectfully, &c.,

A. GLASSELL,
Ass't U. S. Att'y.

Endorsed: Filed July 2, 1855.

JNO. A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Petition of claim'ts.

To the honorable the district court of the United States for the northern district of California:

Petition in accordance with the rules of this court.

TOMAS PACHECO *and al.*
vs.
THE UNITED STATES. } No. 119.

Your petitioners, Tomas Pacheco and Agustin Alviso, respectfully represent to this honorable court that they did heretofore,
86 as will fully appear by the transcript of the proceedings had before the board of commissioners to ascertain and settle the private land claims in the State of California, now on file in this court, present before the said board, whilst holding its session in the city of San Francisco, a claim for the land lying and being in the State of California, within the northern district thereof, and within the jurisdiction of this court, and described in the said transcript, being claim No. 258 of the list of claims presented to the said board, under and by virtue of the act of Congress approved on the 3rd day of March, 1851. The claim of your petitioners is founded upon a grant of the property in fee, made to them by Manuel Micheltorena, governor of California, dated the 23rd day of March, 1844, and upon the previous orders, concessions, decrees, and proceedings contained in the espediente set forth in the transcript aforesaid. All of which appears by the record in this case.

Your petitioners respectfully represent that their said claim was in part rejected by the said board, and in part confirmed, as
87 will appear by their decision and decree, set forth in the transcript aforesaid. That said transcript was filed in the clerk's office of this honorable court, on the 2nd day of November, 1854, and thereafter, on the 9th day of February, 1855, was duly filed in the same office notice of claimants' intention to prosecute the appeal.

And your petitioners now pray that so much of the decision of said board as confirmed two leagues of said land may be affirmed, and so much of the said decision as rejected a part of their claim by limiting said confirmation to two leagues only may be reversed; and, further, that this honorable court will decree the validity of their whole claim to the extent of three square leagues.

TOMAS PACHECO and
AGUSTIN ALVISO,
By their counsel, THORNTON & WILLIAMS.

Endorsed: Filed July 2, 1855.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy*.

88 *Answer of U. S.*

In the district court of the United States for the northern district of California.

THE UNITED STATES, appellees,
vs.
TOMAS PACHECO *et al.*, appellants. } No. 119.

The United States, by their attorney, deny the validity of the title set out in the petition of the said appellants, and pray that the decision of the board of commissioners be reversed and that the said title be decreed to be invalid.

A. GLASSELL, *Ass't U. S. Att'y.*

Endorsed: Filed July 2, 1855.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

89 *Answer of claim'ts.*

In the district court of the United States in and for the northern district of California.

THOMAS PACHECO *et al.*
ads.
THE UNITED STATES. } No. 119.

These respondents, for answer to the petition filed in case, answer and say, it is true that the land in the said petition mentioned lies within the northern district of California, and within the jurisdiction of this court; but they deny that it is true, as alleged in said petition, that their title to the said land is invalid, but aver that the same is valid, and pray that the decision of the said board of commissioners may be reviewed, and their title to the whole land claimed in this case may be decreed to be valid.

THORNTON, WILLIAMS & THORNTON.

Endorsed: Filed July 2, 1855.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

90 *Dep. of Isaac D. Marks.*

United States district court, northern district of California.

THE UNITED STATES
vs.
TOMAS PACHECO *et al.*

SAN FRANCISCO, *October* 16, 1855.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came I. D. Marks, a witness produced on

behalf of the claimants in case No. 119, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 258 on the docket of the said board of commissioners, and was duly sworn and testified as follows :

Present : J. J. Williams, claimants' counsel, and A. Glassell, esq., for the U. S. district attorney.

Questions by claimants.

What is your name, age, and place of residence ?

Answer. Isaac D. Marks; 38 years of age; and I reside in the city San Francisco.

91 Question 2nd. Are you acquainted with the handwriting of Manuel Micheltorena? If yea, state your means of knowledge, and look upon the document now here shown to you purporting to be a grant to the said claimants for the land known as the "Potrero de los Cerritos," heretofore filed in this case, and annexed to the deposition of Wm. Carey Jones; and state whether or not the signature of Manuel Micheltorena where it occurs thereon is his true and genuine signature.

Answer. I am well acquainted with the handwriting of Manuel Micheltorena, from having seen him write frequently; and I believe the signature of Manuel Micheltorena where it occurs in said document above referred to is his true and genuine signature. The rubric on the first page I also believe to be his true and genuine rubric.

Cross-examined by U. S. att'y.

Have you any interest in the event of this suit?

Answer. None whatever.

ISAAC D. MARKS.

92 Sworn to and subscribed before me this 16th day of October, 1855.

JOHN A. MONROE,
U. S. Commissioner.

Endorsed: Filed October 16th, 1855.

JOHN A. MONROE, *Clerk*,
By W. H. CHEVERS, *Deputy.*

Decree confirming claim.—Decree No. 119.

STATED TERM, *October* 29, 1855.

THE UNITED STATES
ads.
TOMAS PACHECO and AUGUSTIN ALVISO.

This cause coming on this day to be heard upon the certified transcript of the proceedings, and decision of the board of commissioners on private land claims in California, of the papers and evidence on

which the same are founded, and upon the further evidence taken by the order of this court, notices of intention to prosecute the
93 appeal from the decision of the said board, having been filed both on the part of the United States and on the part of claimants, and counsel being heard, in consideration of all which the court is of opinion that the whole claim in this case should be confirmed, and doth adjudge, order, and decree that the said claim is valid, and that the same be, and is hereby, confirmed, to the extent of three square leagues. The land of which confirmation is made is known by the name of "Potrero de los Cerritos," and is bounded on the side of the mission of San José by the Sanjon de los Alisos, on the north by the Arroyo de la Alameda, and on the west by the bay, containing about three square leagues. For more particular description reference is made to the grant, map, and espediente referred to therein, copies of which are filed in the said transcript.

M. HALL McALLISTER,
Judge Cir. Court U. S.

94

95 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The honorable Ogden Hoffman, district judge.

Order granting appeal.

THE UNITED STATES
v.
THOMAS PACHECO *et al.*
} D. C. 119.—L. C. 258.

In this case, on application of the United States attorney made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered at the present term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed March 24th, 1857.

JOHN A. MONROE, *Clerk,*
By W. H. CHEVERS, *Deputy.*

96 At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and fifty-eight.

Present: The honorable M. Hall McAllister, presiding judge.

Order granting appeal.

THE UNITED STATES
v.
TOMAS PACHECO and AGUSTIN ALVISO. } D. C. 119.—L. C. 258.

In this case, on application of P. Della Torre, esq., U. S. attorney, it is ordered that an appeal in behalf of the United States from the final decision of the court rendered in said court at the June, 1855, term, be, and the same is hereby, granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay; and the appellants are ordered to serve the usual citation according to law.

M. HALL McALLISTER,
Judge Cir. Court U. S., Dist's of Cal'a.

Endorsed: Filed July 26th, 1858.

W. H. CHEVERS, *Clerk.*

97 *Citation.*

United States of America to Thomas Pacheco and Agustin Alviso, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in Washington on the first Monday in December next, pursuant to an order of appeal granted on the twenty-sixth day of July, A. D. 1858, by the Hon. M. Hall McAllister, circuit judge of the United States for the districts of California, and presiding over the district court for the northern district of California in the discharge of its appellate jurisdiction over the decision of the board of commissioners for the settlement of private land claims in the State of California, in a certain suit, wherein the United States are plaintiffs and you are defendants, on appeal, to show cause, if any there be, why the decision in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal, at San Francisco, this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and fifty-eight.

M. HALL McALLISTER, [SEAL.]
Judge Cir. Court U. S., Dist's of Cal'a.

98 Endorsed: Filed July 26, 1858.

W. H. CHEVERS, *Clerk.*

Order to file mandate U. S. Sup. Court.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-

house, in the city of San Francisco, on Thursday, the ninth day of August, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES, appellants,
vs.
THOMAS PACHECO and AGUSTIN ALVISO, appellees.
} L. C. No. 258. D. C. No. 119.

And now come the said claimants, Tomas Pacheco and Agustin Alviso, by their attorneys, Thornton, Williams, and Thornton, and S. L. Johnson, and present the mandate of the Supreme Court of the United States affirming the decree of this court made herein,
99 as more particularly appears by reference to the said mandate.

Whereupon, and on motion of said claimants by their said attorneys, it is ordered that the said mandate be filed and made a part of the record of this court on this cause, and that the said claimants may proceed under the said mandate and under the decree of this court, as thereby affirmed, as under final decree.

OGDEN HOFFMAN,
Dist. Judge.

Endorsed: Filed August 9, 1860.

W. H. CHEVERS, *Clerk.*

Mandate of Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the
[SEAL.] honorable the judge of the district court of the United States for the northern district of California, greeting:

Whereas lately, in the district court of the United States for the northern district of California, before you, in a cause between the United States, appellants, and Thomas Pacheco and Augustin Alviso, appellees, the decree of the said district court was in the fol-
100 lowing words, viz:

"The court is of opinion that the whole claim in this case should be confirmed, and doth adjudge, order, and decree that the said claim is valid, and that the same be, and is hereby, confirmed to the extent of three square leagues. The land of which confirmation is made is known by the name of Potrero de los Cerritos, and is bounded on the side of the mission of San José by the Sanjon de Alisos; on the north by the Arroyo de los Alameda; and on the west by the bay, containing about three square leagues. For more particular description reference is made to the grant, map, and espediente, referred to therein, copies of which are filed in the said transcript," as by the inspection of the transcript of the record of the said district court, which was brought into the Supreme Court of the United States, by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and fifty-nine, the said cause

101 came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed. Feb. 20th.

You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-nine.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Endorsed: Filed August 9, 1860.

W. H. CHEVERS, *Clerk.*

102 *Petition of U. S. att'y, and affidavit to return and reform survey.*

U. S. dist. court, nor. dist. of Cal.

PACHECO and ALVISO *vs.* THE UNITED STATES. } No. 119.

The surveyor general of California has surveyed the ranch claimed in the above-entitled cause. On the 20th of November, 1860, he made his first publication, giving notice to that effect. The United States are interested in said survey for the reason that the same is erroneous in the respect that it includes public land, and is in other particulars not conformable to the grant or decree in said cause.

The United States, by Calhoun Benham, their district attorney, pray the survey may be ordered into court and reformed.

CALHOUN BENHAM,
U. S. Att'y.

The United States district court for the northern district of California.

The United States, appellants, in the matter of the survey
103 of the "Potrero de los Serritos," claimed by and decreed to Thomas Pacheco and Augustin Alviso. No. 119.

CITY AND COUNTY OF SAN FRANCISCO, *ss:*

On this 14th day of December, A. D. 1860, personally appeared before me, Cutler McAllister, U. S. commissioner, Daniel M. Salmon, who, being duly sworn, deposes and says as follows:

First. That deponent is a resident of Alameda county, State aforesaid, and a citizen of the United States.

Second. That this deponent has resided permanently for and during the last six and one-half years upon a small island of land in the bay

of San Francisco, in the township of Washington, in said Alameda county, containing about seventy acres.

Third. That one Thomas Nelson has also resided upon another adjacent island, similarly situated, for and during about four years, containing about eighty acres.

Fourth. Both of said islands are entirely cut off and separated from the main land by the waters of the bay of San Francisco.

Fifth. That said ranch has been divided and partitioned
104 between said Pacheco and Alviso some several years since; that by such division and segregation that portion of the said ranch to which said islands are adjacent fell to and became the undivided share and interest of said Augustin Alviso.

Sixth. At the time of and always since said partition (until very recently) said Alviso has uniformity declared and published that said two islands were not embraced in his claim of his said share of said ranch, nor in the original grant, and that he had no claim to or interest in the same; and this deponent, upon reliable information, avers that said islands are not within the limits of said original grant, but that the same are public lands of the United States.

Yet the surveyor general, by his deputy, has caused said ranch to be surveyed, and has embraced within the boundaries thereof said two islands.

It is alleged for error that said surveyor general should not have so embraced said islands in his said survey, which survey has been duly returned and approved by said surveyor general.

D. M. SALMON.

105 Subscribed and sworn to before me this 14th day of Dec'r, A. D. 1860.

CUTLER McALLISTER,
[SEAL.] *U. S. Com.*

Endorsed: Filed Dec. 17, 1860.

W. H. CHEVERS, *Clerk.*

Order to return survey.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Monday, the 17th day of December, in the year of our Lord one thousand eight hundred and sixty.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES } In land cases.
v. } District court No. 119.
TOMAS PACHECO *et al.* } Land com. No. 258.

And now at this day, on application of Calhoun Benham, attorney for the United States, it is ordered that the surveyor general of the United States for California return into this court, on or before

Wednesday, the second day of January, A. D. 1861, his official
106 survey and plat of the land finally confirmed in the above-entitled cause, known as "Potrero de los Cerritos," and situated in the county of Alameda, in said district. And it is further ordered that the United States marshal for this district serve upon the said surveyor general, without delay, a certified copy of this order, and make due return hereon.

Endorsed: Served personally by copy on J. W. Mandeville, U. S. surveyor general for Cal'a.

P. L. SOLOMON,
U. S. Marshal,
By L. D. SOLOMON,
Deputy.

SAN FRANCISCO, *December 17th*, 1860.

Returnable January 2nd, 1861.—Issued December 17, 1860.—Filed December 18, 1860.

W. H. CHEVERS, *Clerk.*

107 *Monition.*

UNITED STATES OF AMERICA,
Northern District of California, ss:

The President of the United States of America to the
[SEAL.] marshal of the United States for the northern district of California, greeting:

Whereas objection has been made to the official survey and location of the land finally confirmed in case No. 119, to Tomas Pacheco *et al.*, known as "Potrero de los Cerritos," and situated in the county of Alameda, in said district:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to give due notice to all parties having or claiming to have an interest in such survey and location, that they be and appear before the district court of the United States for said district, sitting in land cases, on or before Wednesday, the 2nd day of January, A. D. 1861, at 11 o'clock a. m., (if that day shall be a day of jurisdiction, and if not, on or before the next Wednesday thereafter,) then and there to intervene for the protection of such interest, or their defaults will be taken. And what you shall have done under this writ do you then and
108 there make return thereon.

Witness the Hon. Ogden Hoffman, judge of said court, at San Francisco, in said district, this 17th day of December, A. D. 1860.

W. H. CHEVERS, *Clerk.*

Endorsed: The within monition was received by me on Monday, the 17th day of Dec'r, 1860, and in obedience thereto I have given due notice as therein commanded, by causing the publication of said notice for three consecutive Wednesdays, in the San Francisco

Herald, commencing on the 19th day of Dec'r, 1860, and for two consecutive Saturdays in the "Alameda Co. Gazette," a paper published nearest the land, commencing on the 22nd day of Dec'r, 1860.

Dated San Francisco.

——— ———, *U. S. Marshal.*

Returnable January 2nd, 1861.—Issued December 17, 1860.—Filed January 2nd, 1861.

W. H. CHEVERS, *Clerk.*

109 *Order on return of motion.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Wednesday, the second day of January, in the year of our Lord one thousand eight hundred and sixty-one.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES *v.* TOMAS PACHECO *et al.* } In land cases.—District court No. 119.—Land com. No. 258.

And now at this day, the United States marshal having made return upon the monition heretofore issued in this cause, that he had given due notice as therein commanded, on motion of C. Benham, attorney for the United States, proclamation was made that all parties having or claiming to have an interest in the survey and location of the land finally confirmed in the above-entitled cause, appear and intervene for the protection of such interest, Calhoun Benham, U. S. att'y, appeared for the United States, and Johnson and Rose
110 and John J. Williams appeared for the claimants, and no other party appearing, whereupon it is ordered that the default of all parties not appearing as aforesaid be, and the same is hereby, entered.

Endorsed: Filed January 2, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows plat; see final decree.)

111 *Order allowing U. S. att'y ten days farther time to except to survey.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the fourth day of March, in the year of our Lord one thousand eight hundred and sixty-one.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
TOMAS PACHECO *et al.* } No. 119.

And now, at this day, on motion of Mr. Benham, U. S. att'y, it is ordered by the court that he have ten days farther time to file exceptions to survey.

Endorsed: Filed March 4, 1861.

W. H. CHEVERS, *Clerk.*

112 *Order opening default and allowing H. P. Jones to intervene.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Monday, the fourth day of March, in the year of our Lord one thousand eight hundred and sixty-one.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
TOMAS PACHECO *et al.* } No. 119.

And now, at this day, on motion of Wm. Carey Jones, esq., it is ordered by the court that the default heretofore entered in this cause be, and is hereby, opened, so far as to allow H. P. Jones to intervene for his interest herein.

Endorsed: Filed March 4, 1861.

W. H. CHEVERS, *Clerk.*

113 *Exceptions of U. S. to survey.*

District court of the United States in and for the northern district of Calif'a.

THE UNITED STATES
vs.
THOMAS PACHECO *et al.* } Potrero de los Serritos.

Exceptions to survey.

And now comes the United States, and by their attorney, Calhoun Benham, excepts to the survey of the land claimed herein, made under final decree, the field-notes of which were approved by the U. S. surveyor gen'l for California, on the day of , 1860; and a certified copy of the plat whereof was filed in this court, pursuant to its order, on the 28th day of January, 1861.

And the United States makes the following exceptions to said survey:

1st. That said survey is erroneous, in this: that in running the west line of said claim upon the Bay of San Francisco, at least two leagues of salt land are left out of, and excluded from, the boundaries of said

claim, thereby, in order to obtain the amount confirmed by the decree, taking and embracing two leagues on the east and interior of good arable land.

2nd. That in running said west line upon said bay, after ex-
114 cluding said two leagues of salt land, the surveyor run said line so as to embrace and include about one league of salt land, and thereby taking in two islands located far below high tide water, and which are surrounded by the waters of said bay.

Therefore the United States pray that said survey be set aside for the reasons above set forth, and for an order directing said United States surveyor general to cause a resurvey of said land, in conformity to the interest and meaning of said final decree, so as to embrace all or none of said salt land, so overflowed and surrounded by the tide-waters of said bay.

CALHOUN BENHAM,
U. S. Att'y.

Endorsed: Filed March 9, 1861.

W. H. CHEVERS, *Clerk.*

115 *Dep. of Louis Cammann on part of U. S.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* THOMAS PACHECO *et al.* } In land cases.—Dist. court No. 119.—Land com. No. 258.

Be it remembered, that on this 4 day of April, A. D. 1861, at San Francisco, in the district aforesaid, before me, Blair Laurie, a commissioner, duly appointed by the district court of the United States for the northern district of California, to take depositions of witnesses in behalf of the United States in land cases pending in said court, personally appeared Louis Cammann, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who being duly sworn, testified as follows:

Present: U. S. att'y for U. S., S. Johnson, esq., and W. Carey Jones, esq., for claimants.

116 *Questions in behalf of the United States.*

Question 1st. What is your name, age, residence, and occupation?

Ans. Louis Cammann; 33 years; Union City, Alameda county; keeper of saloon.

2. Do you know Augustin Alviso, and how long have you known him, if yea?

Ans. I know him by sight, and have known him in this way since 1852.

3. Did you know Tomas Pacheco in his lifetime?

Ans. Yes.

4. Look upon the official plat of the survey filed in this case, and state if you know the two islands or knobs, marked thereon "D. E. Salmon" and "Wm. Brown?"

(Claim'ts object to the use of the term "island" as leading, and because there is nothing on the official plat representing island.)

Ans. I do recognise them.

117 5. How long have you known them?

Ans. Since 1852.

6. Did you ever live on either of them; if yea, on which one?

Ans. The one marked "D. E. Salmon" on the official plat.

7. When did you first occupy it?

Ans. In October, 1853.

8. How long did you remain there?

Ans. Till the latter part of January, 1854.

9. To whom, if anybody, did you surrender the possession?

Ans. I delivered such possession as I had to Wm., Daniel Salmon's brother.

10. How long have you known Daniel Salmon to occupy this knob?

Ans. He first went there in the fall of 1854.

11. Does he now reside on it?

118 Ans. Yes.

12. Have you ever known him to abandon it?

Ans. I knew he was absent at one time, leaving it in charge of some one. He did not take his house away.

13. From your personal knowledge, do or do not ordinary high tides flow around the two knobs spoken of?

(Objected to as immaterial, irrelevant, and leading.)

Ans. They do by the way of the sloughs making into the land.

14. In ordinary high tides can you go around these knobs with a common row-boat?

(Same objection.)

Ans. I went around it with a skiff.

15. Could you go from the knob on which Salmon now lives, and did live in the fall of 1854, upon the main land without using a boat, before the bridge was built?

119 Ans. You could not without jumping the slough which could be done.

(The whole of the foregoing deposition objected to by claimants as being immaterial and irrelevant.)

Deposition closed.

LOUIS CAMMANN.

Sworn and subscribed to before me this 4th day of April, A. D, 1861.

BLAIR LAURIE,
Special Commissioner.

Endorsed: Filed April 4, 1861.

W. H. CHEVERS, *Clerk.*

Dep. of J. G. Chipman on part of U. S.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* THOMAS PACHECO *et al.* } In land cases.—Dist. court No. 119.—Land com. No. 258.

Be it remembered that on this 4th day of April, A. D. 1861, at San Francisco, in the district aforesaid, before me, Blair Laurie, a commissioner duly appointed by the district court of the
120 United States for the northern district of California, to take depositions of witnesses in behalf of the United States in land cases pending in said court, personally appeared John S. Chipman, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: U. S. att'y for U. S.; Sidney Johnson, esq., for claimants.

Questions in behalf of the United States.

Question 1st. What is your name, age, residence, and occupation?

Ans. John S. Chipman; of lawful age; San Leandro, Alameda county; attorney-at-law.

2. Are you acquainted with the claimants in this case, or either of them?

Ans. I first knew Agustin Alviso in 1852, and have known him ever since, and knew Pacheco at the same time, and up to the time of his death.

121 3. State if you ever had any conversations with the claimants, or either of them, or ever heard any conversation of them, or either of them, being present yourself, concerning the boundaries of the rancho in question. If so, state what they were, and when and where you heard them.

(Objected to as irrelevant and hearsay; also, that the claimants had granted their interest in that part of the claim which is the subject of contention, and could not he heard themselves against their own grant.)

Ans. In 1853 or 1854, I think in 1853, I was standing upon the northern extremity of the cerritos, upon the slough that divided the cerritos from the "knob," marked on the official plat "D. E. Salmon," with Augustin Alviso and others. I proposed to him to cross the slough to do some business upon this Salmon "knob." He said, "No; this slough is my boundary. I don't claim the island." I was replevying wild oats that had been cut upon the cerritos, and, as I supposed, upon this Salmon "knob." I was replevying for
122 Alviso. I was replevying this wild oats on the ground that it had been cut upon his ground by trespassers. I was acting

as attorney for Alviso in connection with the sheriff's officers. Having replevied the oats cut upon the northern extremity of the cerritos, and seeing some had been cut upon this "knob," I proposed to cross the slough to take the oats cut upon the "knob" marked, on the official plat, "D. E. Salmon;" and it was then and there that Alviso made the remark spoken of in the first part of this answer.

4. State the character of the two pieces of land delineated upon the official plat of the survey filed in this case as hills—one marked "Wm. Brown," the other "D. E. Salmon"—relative to the surrounding lands and the tides of the bay.

Ans. These two pieces, marked upon the plat "D. E. Salmon" and "Wm. Brown," are two pieces of up dry land, containing each about from 60 to 80 acres. I should think Salmon's piece contained 60 or 70 acres; the other, I should think, contained
123 about 90 acres.

They are surrounded by sloughs and salt marsh each, and whether the high tides flow around both or either of them, I am unable to say.

On the bay side of the line from the mouth of the Alameda creek to and along the Cerritos, and between that line and the main waters of the bay, there is at least one league of salt marsh. On the side of the main land, and adjacent to and about these two pieces spoken of, and within the line of survey, there are two square miles of salt marsh altogether.

(The whole of the foregoing testimony objected to on the ground of its being immaterial and irrelevant.)

JOHN G. CHIPMAN.

Sworn and subscribed to before me this 4 day of April, A. D. 1861.

BLAIR LAURIE,
Special Com'r.

Endorsed: Filed April 4, 1861.

W. H. CHEVERS, *Clerk.*

124 *Dep. of Thos. Canfield on part of the U. S.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* THOMAS PACHECO *et al.* } In land cases.—Dist. court No. 119.—Land com. No. 258.

Be it remembered that on this 4 day of April, A. D. 1861, at San Francisco, in the district aforesaid, before me, Blair Laurie, a commissioner duly appointed by the district court of the United States for the northern district of California, to take depositions of witnesses in behalf of the United States in land cases pending in said court, personally appeared Thomas Canfield a witness produced in behalf of the United States in the above-entitled cause, now pending in said

court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: U. S. att'y for U. S.; Sidney Johnson, esq., and W. Carey Jones, for claimants.

Questions in behalf of the United States.

125 Question 1st. What is your name, age, residence, and the occupation?

Ans. Thomas Canfield; 41 years; Livermore's valley, Murray township, Alameda county; herding cattle and sheep.

2. Do you know Agustin Alviso; and if so, how long have you known him?

Ans. I do; and have known him since 1857.

3. Do you know what is called the Pacheco and Alviso claim?

Ans. I do not.

4. Look upon the official plat of the survey filed in this case, and state if you know the places thereon marked "D. E. Salmon" and "Wm. Brown."

Ans. I do know them, and have lived on one—"Salmon's"—and have been on the other.

5. When did you live on the one you speak of as Salmon's?

Ans. In 1857.

6. At whose instance, if anybody's, did you go there?

126 Ans. I went there at Mr. Salmon's invitation.

7. Was he then living on that island or knob?

(Objected to, because the use of the term island is leading.)

Ans. Yes.

8. Had he a house on it, and family?

Ans. He had a house there, but his family was not there at that time.

9. Did you ever hear Agustin Alviso say anything, if so, what, in relation to his claim to the "knobs" before referred to?

(Objected to, because Augustin Alviso had parted with his interest in all that part of the claim referred to in the question before witness knew him, and could not be heard himself against his own grant; and further objects because the testimony is hearsay.)

Ans. No, sir; I always supposed it to be government land.

127 10. After you knew the "knob," and Augustin Alviso, did he, or did he not, suggest to you to squat on it?

(Same objection as to what Alviso said, and as leading.)

Ans. Yes; he wanted me to squat on the one marked on the official plat "Wm. Brown."

11. On that occasion what did Alviso say?

(Objected to as being cross-examination, and also for same reasons that the preceding questions were objected to.)

Ans. He said I could go and squat on it and no one would trouble me.

12. On that occasion, or any other, did he speak of the boundary of his land or claim on the side of the "knobs?"

(Same objection.)
Ans. I don't recollect—it has been so long ago.
Deposition closed.

THOMAS CANFIELD.

Subscribed and sworn to before me this 4 day of April, A. D. 1861.
BLAIR LAURIE,
Special Commissioner.

128 Endorsed: Filed April 4, 1861.
W. H. CHEVERS, *Clerk.*

Dep. of Emery Munzon on part of U. S.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* TOMAS PACHECO *et al.* } In land cases.—District court No. 119.—Land com. No. 258.

Be it remembered that on this 4 day of April, A. D. 1861, at San Francisco, in the district aforesaid, before me, Blair Laurie, a commissioner duly appointed by the district court of the United States for the northern district of California, to take depositions of witnesses in behalf of the United States in land cases pending in said court, personally appeared E. Munzon, a witness produced in behalf of the United States in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn,
129 testified as follows:

Present: U. S. att'y for the U. S.; S. Johnson, esq., for the claimants, Wm. C. Jones, for claimants.

Questions in behalf of the United States.

Question 1st. What is your name, age, residence, and occupation?
Ans. Emery Munzon; 38 years; Washington township, Alameda county; farmer.
2. How long have you resided there?
Ans. Since the 7th July, 1852.
3. Do you know Agustin Alviso?
Ans. I do.
4. How long have you known him?
Ans. Since January, 1853.
5. Did you know Thomas Pacheco in his lifetime?
Ans. I did.
6. When did you first know him?
Ans. In January, 1853.
130 7. Is he dead?
Ans. He is.
8. How long a time ago did he die?

Ans. I am not positive ; 3 or 4 years ago.

9. Where did he reside in his lifetime ?

Ans. In Washington township.

10. Where does Agustin Alviso reside ?

Ans. In Washington township.

11. Do you know what is called the Alviso and Pacheco claim, in that township ?

Ans. I do.

12. Does Alviso reside upon a portion of that claim now ?

Ans. He does.

13. Did Tomas Pacheco, in his lifetime, reside upon a portion of it ?

Ans. He did.

14. Have you at any time, resided with Augustin Alviso, or
131 upon his part of the claim ?

Ans. I never did.

15. Have you any knowledge of a division of the claim between Pacheco and Alviso, verbal or otherwise ?

(Objected to because a verbal division would be null, and parol evidence would not be the best proof of any other division.)

Ans. I have seen papers of a division between Alviso and Wm. Carey Jones and T. B. Strode.

(Answer objected to as not being the best evidence ; also objected to by W. C. Jones.)

16. Did you ever hear a verbal agreement between Alviso and Pacheco in reference to a division of the claim ?

Ans. I never did.

17. Did you at any time have a conversation with Agustin Alviso, touching the boundaries of the claim between his residence and the mouth of Alameda creek ?

(Objected to because it is hearsay evidence, and because
132 Alviso, the person referred to, parted with his interest in the claim upon that side before the witness became acquainted with him, and that grantor cannot be heard to the prejudice of his own grant.)

Ans. I have had conversations with him in regard to the boundaries of his grant, but never heard him say anything about the mouth of Alameda creek in connection with the boundaries.

18. Did you ever hear him say whether the islands, as they appear upon the official plat of the survey filed in this case, (the points to which I allude are marked "Wm. Brown," and the other "D. E. Salmon,") were or are within the boundaries or not ?

(Objected to for the same reason as to ques. 17 ; and also because the official plat of the survey does not show that any islands are embraced in it.)

Ans. I never heard Alviso say he claimed them as being within his boundaries. I heard him say that he ordered a Peruvian to squat on one of them—the one marked "Wm. Brown."

133 (Objected to as incompetent and irrelevant.)

t 19. Are you well acquainted with those islands or knobs, and he surrounding land and waters?

(Objected to because the official plat does not show that there are any islands embraced within the boundaries.)

Ans. I am.

20. How long have you known that locality?

Ans. I have known it since 1853.

21 Does or does not high tide water flow around the knobs above referred to?

(Objected to as leading.)

Ans. It does.

22. Are you acquainted with the slough laid down on official plat of survey filed in this case; passing by the knob marked "D. E. Salmon?"

Ans. I am.

23. About what is its average width along Salmon's "knob?"

134 Ans. About 200 feet.

24. How far, if at all, above knob marked "D. E. Salmon" is that slough navigated by trading vessels, by its courses?

Ans. I could not say; about $\frac{1}{2}$ or $\frac{3}{4}$ of a mile on a direct line from the knob to the embarcadero.

25. How much, by the best estimate you can make, salt or marsh ground (looking on the official plat of survey) lies between the line of the survey that runs upon the bay side of the "knobs" and the main waters of the bay?

(Objected to because it does not appear that witness is an expert or competent to judge of the matters submitted to him in the question.)

Ans. About 4 square miles.

26. How much, by the best estimate you can make, (looking on the plat aforesaid,) salt or marsh land lies inside of the "knobs" in a direction of Union City and Alvarado?

(Same objection.)

Ans. About 2 square miles.

135 27. Looking upon said plat, how much, if any, salt or marsh land lies between the cerito and the main waters of the bay?

(Same objections; also objected to because the plat does not show where the main waters of the bay are.)

Ans. From 3 to 4 square miles.

Cross-examination by claimants.

28. You state you live in Washington township. Say in what particular part of it; describe the locality.

Ans. Two miles west of Centerville, near the residence of Agustin Alviso.

29. How long did you live in that locality?

Ans. Since the 1st day of January, 1853.

30. Where did you live previous to that time?

Ans. Near Maury's landing—about 3 miles south of my present

residence, a little east of south—on the land marked on official plat "Lands of the ex-mission of San José."

136 31. You state, in answer to ques. 15, that you have seen papers of a division between Alviso and Wm. Carey Jones and T. B. Strode. State the character of those papers, their contents, in what manner they were executed, and what they describe.

Ans. They were papers in Spanish, recorded in Santa Clara county, stating that a portion of the rancho known as Cerritos, lying south of a *callado* or ditch and a sausal or willow swamp, should be the portion pertaining to Augustin Alviso. I can give the boundaries nearly word for word as the papers described them. From the willow swamp, where the ditch ends, the line to run to a point in the sausal or willow swamp, in direction to Union City; from this point of this willow grove in the nearest direction to the high hills; from the foot of the hills along the edge of said hills to the bay of San Francisco, leaving all said hills for the benefit of said Augustin Alviso; thence along said bay to the mouth of the Arroyo Alameda; then up said arroyo to the place of beginning.

I think that the papers were acknowledged before Murphy. I think that Alviso and Strode were the ones that signed the

137 paper. I think Strode signed for W. Jones as his attorney.

32. Are you familiar with the Spanish language?

Ans. Sufficiently to read and converse on ordinary business.

33. Please repeat in Spanish the boundaries you have described in answer to question 31.

Ans. Empezando á la punta del vallado cerea onde se junta con el Arroyo de Alameda cerea la casa de Don Tomas Pacheco siguiendo dicho vallado hasta que junta con el sauzal, donde se conclude: de alli, se sigue á la punta del sauzal en direccion á Union City; de este sauzal en direccion mas corta á las lomas altas; de alli se sigue la orilla de dichos lomas á la bahia de San Francisco, y por la orilla de dicho bahia á la boca del Arroyo Alameda, y arriba por el Arroyo Alameda hasta se llegue al vallado donde se empezo.

138 34. Did you ever see the original of those papers you have described, and when, if so?

Ans. I saw a paper in the possession of Alviso, purporting to be the original, somewhere from 3 to 5 years ago.

35. How do you know the paper was recorded in Santa Clara county?

Ans. Alviso sent me to get a certified copy of the record of it from the clerk of the county of Santa Clara. I got it there.

36. State the name of the office of the person who gave you that certified copy, and the date of it, and where it is now?

Ans. I think his name was Healey. He was the county clerk in the city of San José. It was dated at the time he delivered me the copy, some 3 to 5 years ago. I delivered it to Augustin Alviso at that time. I don't know where it is now.

37. Have you ever had any interest in any lands either which

139 this survey would favor or operate against?

Ans. No; I have not, nor ever had.

38. What consideration did Agustin Alviso pay you for going to San José and procuring the certified copies that you speak of?

Ans. Not a cent.

39. Were you promised, or do you expect, any consideration for it?

Ans. He promised to pay me for my day's work, and the cost of the trip.

Deposition closed.

EMERY MUNZON.

Subscribed and sworn to before me this 4th day of April, A. D. 1861.

BLAIR LAURIE,
Special Commissioner.

Endorsed: Filed April 4, 1861.

W. H. CHEVERS, *Clerk.*

140 *Intervention of H. P. Jones.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *vs.* THOMAS PACHECO *et al.* } No. 119.

NORTHERN DISTRICT OF CALIFORNIA, *ss:*

H. P. Jones, being sworn, says that he is the owner of a certain portion of the said rancho, embraced within and designated by certain boundaries, a large portion of which is embraced within the limits of the survey made of said rancho by the surveyor general of the United States, containing by estimate one thousand acres, more or less; that he holds said premises by virtue of mesne conveyances from the original grantees and confirmees of said rancho, Thomas Pacheco and Augustin Alviso, and that for more than two years last past he has been in quiet and peaceable possession of said premises under his said title.

Petitioner further deposes and says, that he has an interest in the survey of said rancho as returned into this court by the sur-
141 veyor general of the United States, and prays that he may intervene herein for the protection of his said interest as above mentioned.

H. P. JONES.

Sworn and subscribed to before me this 10th day of April, A. D. 1861.

W. H. CHEVERS, *U. S. Com.*

E. A. LAWRENCE,
And WM. CAREY JONES,
Att'ys for Petitioner.

Endorsed: Filed April 10, 1861.

W. H. CHEVERS, *Clerk.*

Dep. of E. H. Dyer on part of U. S.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* TOMAS PACHECO *et al.* } In land cases.—District court No. 119.—Land com. No. 258.

Be it remembered that on this 11th day of June, A. D. 1861, at San Francisco, in the district aforesaid, before me, Blair Laurie, a commissioner duly appointed by the district court of the United
142 States for the northern district of California, to take depositions of witnesses in behalf of the United States in land cases pending in said court, personally appeared E. H. Dyer, a witness produced in behalf of the United States, in the above-entitled cause, now pending in said court, under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: U. S. att'y for U. S.

Questions in behalf of the United States.

Question 1st. What is your name, age, residence, and occupation?

Ans. E. H. Dyer; 39 years; Alvarado, Alameda county; county surveyor of Alameda.

2. Have you made a map or chart of the point land lying between Alameda creek and the Bay of San Francisco?

Ans. I have.

3. Did you make so much map or chart as a surveyor?

Ans. I did.

143 4. Is the exhibit marked E. H. D., attached to this deposition, the one made by you and above referred to, and is it a correct delineation of the lands referred to?

Ans. It is one, and is substantially correct.

5. Is the line on this plat, which purports to be the westerly line of the rancho of the Cerritos on said map, a true representation of that line as laid down on the plat of the U. S. survey?

Ans. It is.

6. Do you know if the knobs, which appear upon said exhibit like islands, are surrounded by high tide-water?

Ans. They are marked on my exhibit, Peruvian and Hunter island, and they are surrounded by high tide-water.

7. How much salt land lies between the westerly line of the survey of said rancho, and the main waters of the bay?

Ans. Between 7 and 8 square miles.

144 8. How much salt land of the same character lies between said westerly line and the Alameda creek?

Ans. Between 3 and 4 square miles.

9. Does the black line marked upon Exhibit E. H. D. show the true line between the salt and dry land?

Ans. It was not all made by actual survey; part of it was, and the rest from observation, and I think it is substantially correct.

10. Do you know of an artificial ditch from the Alameda creek to the willows, or at a point by Patterson's residence?

Ans. I know there is such a ditch.

11. Where does it leave Alameda creek, with reference to Pacheco's old residence, and in what direction from that point does the ditch run. And does it cross the old mission road from Alvarado?

Ans. Judging from its course, I should think it left Alameda creek near the house. It runs in a westerly direction, crossing the
145 road from Alvarado to the mission to the willows, and I should think it would strike about Patterson place at the willows.

12. Do you know the place where the U. S. surveyor has located the line of this rancho in the direction of Santa Clara?

Ans. I do not.

13. Do you know the serpentine indentation in the land from Mayhew's landing, leading towards the Alameda creek, passing through Centreville?

Ans. I do.

14. Is that a natural or artificial indentation in the land?

Ans. It has the appearance of being natural, not artificial—produced apparently by an overflow of the Alameda creek.

15. Can you say whether what purports to be the upper line in the direction of Santa Clara, delineated on the official plat of the
146 survey in this case, represents a natural or artificial ditch?

Ans. I should think it represents a natural ditch.

Deposition closed.

E. H. DYER.

Subscribed and sworn to before me this 11th day of June, 1861.

BLAIR LAURIE, *Com'r.*

Endorsed: Filed 11 June, 1861.

W. H. CHEVERS, *Clerk.*

(Here follows Exhibit E. H. D., annexed to dep. of E. H., Dyer, page 146.)

147 *Dep. of Wm. J. Lewis, on part of claim'ts.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* TOMAS PACHECO *et al.* } In land cases.—Dist. court No. 119.—Land com. No. 258.

Be it remembered, that on this 28th day of April, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil

causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared William J. Lewis, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows :

Present : J. J. Williams and Sidney L. Johnson, esq'r's, for claimant, and E. H. Laurence, esq., for Intervenor Jones *et als.*

148 *Questions in behalf of the claimant.*

Question 1st. What is your name, age, place of residence, and occupation ?

Ans. My name is Wm. J. Lewis; my age is fifty years. I reside in San Francisco, and am by occupation a civil engineer and surveyor.

2. Are you the same Wm. J. Lewis who made the official survey in this case, the plat of which is now before you ?

Ans. I am.

3. Was there any difficulty in this case in ascertaining the northern, eastern, and southern boundaries of the ranch, as defined in the original grant and final decree of confirmation ?

Ans. There was not. The Alameda creek is a well-known stream, formerly the boundary between Santa Clara and Contra Costa counties, and running from the mountains to the bay. The Sanjon de los Alisos is a wide ditch, running from Alameda creek to a slough
149 on the margin of the swamp lands adjacent to the bay of San Francisco; it is unmistakeably defined on the ground, and is well known to the residents in the vicinity.

4. Upon what principles were you governed in running the western line ?

Ans. The boundary, as finally confirmed on the western side, is "the bay of San Francisco," and the contents of the rancho is "about three square leagues." Under the regulations of the land office and the general instructions of the U. S. surveyor general of California, the claimants are entitled to select the specified quantity of land within their boundaries. When I arrived in the order of survey at "post 175," at Beard's Embarcadero, Augustin Alviso stated that he did not desire that I should include any of the swamp land to the westward of the range of hills marked "Los Ceritos," but did wish to include that range. I accordingly ran the line along the western base of that range to "post 211," at the northern end of the
150 hills. The property north of that point, and extending to Alameda creek, was sold several years since to Strode, Jones, and others, whose interest in the survey were represented by Hezekiah P. Jones, brother of Wm. Carey Jones, one of the original purchasers from Pacheco and Alviso. The said H. P. Jones wished to include the two little ceritos to the north and northwestward of the range already mentioned. The line was accordingly run from post 211 to post 212, at the west end of the most eastern of the two ceritos ; thence to post 213, at the southern end of the western cerito ;

thence along its western margin to post 218, at its northwestern end; thence in a direct line to post C. R. 1, the place of beginning, on Alameda creek. I calculated the area of the survey, and finding that there were two thousand seven hundred and four acres less than the area confirmed in this case, (three leagues,) I informed Mr. Jones that he was at liberty to select that quantity of land to the westward of my western lines, and between them and the bay. He said
151 he did not desire the possession of that land, that he considered it of very little value. The land from post 212 to 213 crosses salt marsh of the ordinary character of the salt marshes surrounding the bay. These marshes are generally at the elevation of ordinary high tides, but are overflowed twice a month, at the new and full moon. The same remark applies to the general character of the line from post 218 to post C. R. 1; but on that line there are some points where ordinary tide passes a little to the eastward of the line, where small sloughs run up into the main land.

5. Are the two small ceritos referred to by you properly called or considered "islands?"

Ans. They are not properly called islands, an island being a tract of land surrounded by water, and these are evidently surrounded by water but a small portion of the whole time.

6. Look upon the diseños in this case marked "18 S. D. K.," and "31, S. D. K.," and observe the slough making up into the
152 main land from the estero, and state with what slough or object it corresponds on the ground.

Ans. On both diseños they are undoubtedly intended to represent the slough which crosses the western line between posts 211 and 212. This slough extends up a long distance to the eastward, forming in its upper part a sausal or willow swamp. No other between that and Alameda creek extends much if any distance into the higher land.

7. Did you ever make a prior survey of this land? If so, state when, for whom, and for what purpose.

Ans. I made a survey of Strode and Jones's purchases from Alviso in 1853. Their purchases did not embrace a portion of the land to the eastward, which was leased by Beard and Horner of Alviso, but I made a survey of the whole of the western part, extending westward of the lines from post 212, and the lines from post 212 to C. R. 1, and extending from these lines to the margin of the bay,
153 and including the two little ceritos. This survey was of Strode and Jones's portion of the ranch, and Mr. Alviso was present while I was making the survey along the northern margin of the *sausal* until I came running westerly to the slough. The eastern boundary of one part of the Jones and Strode survey was a ditch running from the Alameda creek, near Tomas Pacheco's house, to the sausal, excepting a small reservation on the creek; the remaining portion of their purchase was a tract bounded on the westward by the ditch, on the south by the road leading from Union City to the mission of San José, and on the north and east by the boundaries of the rancho.

The latter part of the answer, commencing with the words "The

eastern boundary of one part of the Jones and Strode survey," etc., was in answer to a question verbally propounded by Mr. Lawrence, counsel for int'r Jones *et al.*

Cross-examination. Deposition closed.

WM. J. LEWIS.

154 Sworn to and subscribed April 28, 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed May 15, 1862.

W. H. CHEVERS, *Clerk.*

Dep. of Jas. T. Stratton, on part of claim'ts.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* TOMAS PACHECO *et al.* } In land cases, dist. court, No. 119.—Land com. No. 258.

Be it remembered that on this 28th day of April, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States,

155 pursuant to the acts of Congress in that behalf, personally appeared Jas. T. Stratton, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress, to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows:

Present: J. J. Williams, esq., and Sidney L. Johnson, esq., for claimant; and E. A. Laurence, esq., for int'rs Jones *et als.*

Question 1st. What is your name, age, place of residence, and profession?

Ans. My name is James T. Stratton; I am of lawful age; I reside in Alameda county, and my profession is that of surveyor.

2. Did you ever hold any office in Alameda county; if so, what and how long?

Ans. I was deputy county surveyor from 1853 to 1859, and have been county surveyor for two years, and have also been a U. S. deputy surveyor.

156 3. Do you know the rancho claimed in this case?

Ans. I do know it well.

4. Look upon the diseñor in this case, marked "18, S. D. K" and "31, S. D. K." and observe the slough making up into the main land from the estero, and state with what slough or object it corresponds on the ground?

Ans. It corresponds on the ground with the slough shown on the

copy plat of official survey, filed in this case, crossing eastwardly into the main land, at the southerly side of the cerito, on which is marked "D. E. Salmon."

Cross-examination.

Questions by counsel for intervenors Jones *et al.*

Ques. 5. State what is the character of the land between the slough last referred to and the beginning post, and designated as marsh land.

Ans. It is of the usual character of the salt marsh land sur-
157 rounding the bay of San Francisco, and is generally but two or three inches above ordinary high tide, and is only overflowed during spring tides.

6. State the character of the two ceritos, marked Brown and D. E. Salmon, with reference to the main land.

Ans. They are isolated hills, surrounded by the salt marsh above described; they are sometimes called islands, but not properly so, because they are only surrounded by water at the spring tides.

Deposition closed.

JAS. T. STRATTON.

Subscribed and sworn to this 28th day of April, A. D. 1862, before me,

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed May 15, 1862.

W. H. CHEVERS, *Clerk.*

158 *Dep. of Salvio Pacheco, on part of claim't.*

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* TOMAS PACHECO *et al.* } In land cases, dist. court, No. 119.—Land com. No. 258.

Be it remembered, that on this 29th day of April, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Salvio Pacheco, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court under the acts of Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: his evidence being interpreted by Manuel Arrisa, jr., a sworn interpreter.

159 Present: J. J. Williams, esq., and Sidney L. Johnson, esq., for claimant, and E. A. Laurence, esq., for intervenors Jones *et als.*

Questions in behalf of the claimant.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Salvio Pacheco; my age is over sixty years; and I reside in the county of Contra Costa.

2. Do you know the rancho claimed in this case, called Potrero de los Ceritos?

Ans. I do.

3. Do you know by whom the original *diseño* was made for Alviso and Pacheco?

Ans. I myself made the *diseño* and petition.

4. From what did the rancho take its name?

Ans. From the "*Rinconado de* Ceritos" and the Arroyo Alameda.

5. Do you know the two small ceritos, represented on the
160 official plat in this case, between the slough and the Alameda creek?

Ans. I do.

6. Do you know whether or not those two ceritos were included in the grant and diseño to Pacheco and Alviso?

Ans. They were in both the diseño and grant, and I think in the petition for the grant.

7. Were the said *ceritos* used and occupied by the original grantees, if so, how?

Ans. Originally they were used and occupied by the mission, and after the petition of Pacheco they were always occupied by Pacheco and Alviso. They were used for the purpose of pasturing hogs, sheep, and cattle, and they contained very good grasses.

Cross-examination waived. Deposition closed.

SALVIO PACHECO.

Subscribed and sworn to this 29th day of April, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com.*

161 Endorsed: Filed May 15, 1862.

W. H. CHEVERS, *Clerk.*

Dep. of Guillermo Castro, on part of claim't.

In the district court of the United States for the northern district of California.

THE UNITED STATES *v.* TOMAS PACHECO *et al.* } In land cases.—Dist. court No. 119.—Land com No. 258.

Be it remembered that on this 29th day of April, A. D. 1862, at the city of San Francisco, in the district aforesaid, before me, Wm. H. Chevers, a commissioner duly appointed by the circuit court of

the United States for the districts of California to take acknowledgments of bail and affidavits, and also to take depositions of witnesses in civil causes depending in the courts of the United States, pursuant to the acts of Congress in that behalf, personally appeared Guillermo Castro, a witness produced in behalf of the claimant in the above-entitled cause, now pending in said court, under the acts of
162 Congress to ascertain and settle the private land claims in the State of California, who, being duly sworn, testified as follows: (his evidence being interpreted by A. D. Splivalo, a sworn interpreter.)

Present: J. J. Williams, esq., and Sidney L. Johnson, esq., for claimant.

Questions in behalf of the claimant.

Question 1st. What is your name, age, and place of residence?

Ans. My name is Guillermo Castro; my age is fifty-two years; and I reside in San Lorenzo, Alameda county.

2. Do you know the rancho claimed in this case, called Potrero de los Ceritos?

Ans. I do. I have known it for over forty years.

4. From what did the rancho take its name?

Ans. Because the mission of San José kept their horses there, so it was called the Potrero, and Ceritos because there are some small hillocks on the place called in Spanish ceritos.

163 5. Do you know the two small ceritos represented on the official plat in this case, between the slough and the Alameda creek?

Ans. I do.

6. Do you know whether or not those two ceritos were included in the grant to Alviso and Pacheco?

Ans. I believe they were.

7. Were the said ceritos used and occupied by the original grantees; if so, how?

Ans. They had cattle there, though on the cerito nearest to Alameda creek. I am not sure that the cattle could always go there, on account of the difficulty of passage during high water from the other cerito, but it was evident they were included in the grant. The mission used these ceritos prior to the grant for the pasturage of cattle.

Deposition closed.

GUILLERMO CASTRO.

Subscribed and sworn to this 29th day of April, A. D. 1862, before me.

W. H. CHEVERS, *U. S. Com.*

Endorsed: Filed May 15, 1862.

W. H. CHEVERS, *Clerk.*

164 *Notice of motion to file amended intervention.*

In the district court of the United States for the northern district of California.

THE UNITED STATES
v.
TOMAS PACHECO.

Take notice that said H. P. Jones, intervenor herein, will move said court on Monday, the 7th instant, at 11 o'clock a. m., or as soon thereafter as counsel can be heard, for an order allowing him to file an amended petition of intervention herein, with a copy whereof you are herewith served.

San Francisco, July 1, 1862.

Yo's, &c.,

E. A. LAURENCE,
Att'y for Intervenor.

To W. H. SHARP, esq.,
U. S. Dist. Att'y.
S. L. JOHNSON, esq.,
J. J. WILLIAMS, esq'r.,
Atty's for Claimants.

165 Endorsed: Due service of a copy of the within notice and amended intervention admitted July 1, 1862.

SIDNEY L. JOHNSON,
Of Counsel for Claimants.

Rec'd a copy of the within this day, July 2d, 1862.

WM. H. SHARP,
U. S. Att'y.

Filed July 9, 1862.

W. H. CHEVERS, *Clerk.*

Intervention of H. P. Jones, as amended.

In the district court of the U. S. for the northern district of Cal.

THE UNITED STATES
vs.
THOMAS PACHECO *et al.*

And now comes H. P. Jones, intervenor herein, and files this his amended petition of intervention herein, and excepts to the survey of the land claimed herein, a certified copy of the plat whereof was filed in this court, pursuant to its order on the 28th day of January, 1861.

Said H. P. Jones further alleges that he is the owner of 277
166 acres of land near the centre of said rancho "Los Ceritos," marked Jones & Strode, 277 acres, on the accompanying map,

by virtue of mesne conveyances from said Jones & Strode; also, that he is the owner of 4,635 acres of said rancho adjoining the bay of San Francisco, and lying between the Alameda creek on the north and the line known as the division line between Jones, of the one part, and Alviso, of the other part; designated, on the accompanying map, as "N. 80, °38 W., (true course,) 108 ch's.," running from the bay of San Francisco to the northerly point of the range of hills, and which said land are marked upon said map as follows: "C. B. Strode & William Carey Jones, esq'rs, 4,635 acres." That he is the owner of said land by virtue of mesne conveyances therefor from the original grantors and confirmees of said rancho, Tomas Pacheco & Augustin Alviso, and that for more than three years last past he has been in the quiet and peaceable possession of the same under his said title.

Said H. P. Jones further alleges that in the month of April,
167 A. D. 1853, said Alviso & said Jones, representing the parties in interest in said lands, under said deeds of conveyance from Alviso & Pacheco to said Jones & Strode, made a division of the said rancho, and that said division line was run by Wm. J. Lewis, county surveyor of Santa Clara county, with the knowledge, approval, and consent of said Jones and said Alviso, which said line is designated upon the map hereto attached as the southern and easterly boundary of the tract of land designated thereon as "C. B. Strode & William Carey Jones, esq'rs, 4,635 acres."

Said H. P. Jones further alleges that, of the last-named tract of 4,635 acres so owned by him, and set off to him by said original grantees, under said division of said rancho, the sum of 2,700 acres of land, or thereabouts, has been excluded from said survey. The westerly line of said rancho, according to said survey, running through the said tract of land from the Alameda creek to the point of said range of hills, at a distance of from one and one-half mile to two miles easterly from the bay of San Francisco, thereby excluding from said survey, said 2,700 acres of land, so conveyed to
168 this petitioner.

The petitioner further says that the remaining boundaries of said rancho, to the north, east, and south, are well defined natural objects, and that the survey made by said surveyor general has embraced in said survey all the lands belonging to said rancho upon the said three sides, the north, the east, and the south, and that there is still a deficiency of about 2,700 acres between the said survey and the calls of said grant.

Wherefore the said H. P. Jones excepts to the westerly line of said survey, because,

1. Said westerly line does not follow the calls of said grant, which is the margin of the bay of San Francisco.

2. That it excludes 2,700 acres of land conveyed by said original grantees and confirmees to intervenor.

3. That said survey does not embrace the quantity of land granted to said Alviso & Pacheco, but that it falls short of the same 2,700.

4. Because about 2,700 acres of land lies between the westerly

line of said survey and the margin of the bay, which is not embraced in any other grant.

Therefore petitioner prays that said survey may be so
169 amended as that said westerly line shall follow down the Alameda creek to the bay of San Francisco; thence along the margin of the bay to such a point as that a line running from the margin of the bay to the point of the range of hills marked on the map as "Los Cerritos" will embrace 2,700 acres more of land, provided there shall be that amount of land lying between said westerly line of the survey and the margin of the bay, and included in the tract marked on the accompanying map as "C. B. Strode & William Carey Jones, esq'rs, 4,635 acres;" and in case there shall be less than said 2,700 acres embraced within said boundaries, then that said survey shall follow along the margin of the bay to the point where said division line marked on the accompanying map as "N. 80, °38 W., (true course,) 108 ch's," intersects said bay; thence easterly along said line to the point of said hills marked "Los Cerritos," one hundred and eight chains.

H. P. JONES.

Sworn to and subscribed before me this 1st day of July, A. D. 1862.

W. H. CHEVERS, *U. S. Com.*

170 Endorsed: Filed July 9th, 1862.

W. H. CHEVERS, *Clerk.*

[Here follows map annexed to the above intervention, 170.]

171 *Order allowing intervenor, H. P. Jones, to file amended intervention.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Wednesday, the 9th day of July, in the year of our Lord one thousand eight hundred and sixty-two.

Present: the honorable Ogden Hoffman, district judge.

THE UNITED STATES
v. } 119.
TOMAS PACHECO *et al.*

And now, at this day, on reading and filing notice of motion, and on motion of E. A. Laurence, esq., counsel for the intervenor, H. P. Jones, it is ordered by the court that he have leave to file an amended intervention in that behalf.

Endorsed: Filed July 9th, 1862.

W. H. CHEVERS, *Clerk.*

172 *Deeds and stipulation.*

This indenture, made this 25th day of September, 1858, between P. E. Edmondson, as sheriff of the county of Alameda of the first part,

and Hezekiah P. Jones, of the city and county of San Francisco, and State of California, of the second part; whereas, by virtue of a writ of execution issued out of, and made under the seal of, the district court of the twelfth judicial district, in and for the county of San Mateo, State aforesaid, at the suit of Horace Hawes against William Carey Jones and Charles Brown, to the said sheriff directed and delivered, commanding him that of the goods and chattels of the said William Carey Jones and Charles Brown, in his bailiwick, he should cause to be made certain moneys in the said writ specified, and if sufficient goods of the last-named person could not be found, that then he should cause the amount of said judgment to be made of the lands, tenements, and real estate whereof the said last-named person was seized; and whereas because sufficient goods and chattels of the last-named person in the said writ could not be found, whereof he, the said sher-
173 iff, could cause to be made the moneys specified in said writ, he, the said sheriff, did, in obedience to the said command, levy on, take and seize all the estate, right, title, and interest of the said last-named persons of, in, and to the lands, tenements, real estate, and premises hereinafter particularly set forth and described, with the appurtenances, and did, on the 22d day of March, A. D. 1858, sell all the right, title, and interest of the said last-named person in and to the said premises, at public vendue, at the court-house door, in the town of San Leandro, in said county, between the hours of nine in the morning and five in the afternoon of that day, namely: at two o'clock, he having first given notice of the time and place of such sale, according to law; at which sale the right, title, and interest of the last-named persons in and to the said premises, were struck off and sold to Hezekiah P. Jones for the sum of two thousand ($2,000) dollars, he, the said Hezekiah P. Jones, being the highest bidder, and that being the highest sum bidden for the same, whereupon the said sheriff, after receiving from said purchaser the said sum of money so
174 bidden as aforesaid, gave to him such certificate as is by law directed to be given, and a certificate of such sale was duly filed in the office of the recorder of the county of Alameda; and whereas the six months after such sale thereof have expired, without any redemption of the said premises having been made:

Now, this indenture witnesseth that I, P. E. Edmondson, the sheriff, as aforesaid, by virtue of the said writ, and in pursuance of the statute in such case made and provided, for and in consideration of the sum of money above mentioned, to me in hand paid as aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto the said Hezekiah P. Jones, his heirs or assigns, all the estate, right, title, and interest of the said persons against whom the said writ of execution has been issued as aforesaid, of, in, and to the following described property, to wit: that certain piece or parcel of land described as follows, viz: commencing at a point on the mission road leading from Alvarado to the mission of San José, at the most north-
175 erly corner of a certain mile square of land, formerly sold by

Alviso and Pacheco to Jones, Tompkins & Strode; thence southwesterly, along the northwesterly line of said mile square, one mile to the westerly corner of said square; thence southeasterly, along the southwesterly line of said mile square, one hundred and sixty rods to the lands of Hiram Davis; thence at right angles in a southwesterly direction, along said Davis's lands, one hundred rods; thence at right angles, in a southeasterly direction, one hundred and sixty rods to the line of Harry Watson's land; thence southwesterly, along the line of said Harry Watson's lands, to the willows; thence along the willows to the most westerly part thereof; thence in the shortest direction to the high hills; thence along the base of the high hills to the shore of the bay of San Francisco; thence along the shore of the said bay of San Francisco to the mouth of the Alameda creek; thence up the creek till it strikes the original town plat of Union city; thence along the southern easte n line of said original town of Union city to the lands purchased by H. C. Smith of Alviso & Pacheco; thence
176 along the western line of said Smith's land, to the point of beginning. Said tract, above described, being a portion of the "Rancho de los Serritos."

(Saving and excepting, out of the said above-described tract of land, such portion or portions thereof as may have been heretofore conveyed by said defendant, William Carey Jones, or his agent.) Also all the right, title, and interest, which the said defendant Wm. Carey Jones may have in and to any other portion or portions of said "Rancho de los Serritos." Said property above described being situated in Washington township, county of Alameda, State of California, together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, to have and to hold the said above-mentioned and described premises, with the appurtenances, unto the said Hezekiah P. Jones, his heirs, and assigns forever, as fully and absolutely as P. E. Edmondson, the sheriff aforesaid, can, may, or ought to, by virtue of the said writ, and of the statute in such case made and provided, grant, bargain, sell, release, assign, convey, and confirm the same.

177 In witness whereof I, the said sheriff, have hereunto set my hand and seal the day and year first above written.

P. E. EDMONDSON, [SEAL.]
Sheriff, &c., &c.

Sealed and delivered in presence of—
EDW'D S. CHIPMAN.

STATE OF CALIFORNIA,
County of Alameda, ss:

On this twenty-ninth day of December, A. D. one thousand eight hundred and fifty-eight, before me, Edward S. Chipman, a notary public in and for said Alameda county, residing therein, duly commissioned and sworn, personally appeared the within-named P. E. Edmonson. (sheriff, &c., &c.,) whose name is subscribed to the annexed instrument as a party thereto, and personally known to me to

be the individual described in and who executed the said annexed instrument, and subscribed his name thereto, and the said P. E. Edmondson, (sheriff, &c., &c.,) duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have set my hand and affixed
178 [SEAL.] my official seal, at my office, in the said county of Alameda, the day and year last above written.

EDW'D S. CHIPMAN,
Notary Public.

Endorsed: Filed for record at request of grantee Dec. 29, 1858, at 9½ o'c. a. m., and recorded Jan'y 6, 1859, at 3½ o'c. p. m., in book H. of deeds, on pages 527, 528, and 529, of the records of Alameda county.

H. M. VESEY,
Co. Recorder.
P'r NAT. RENNIE,
Deputy Recorder.

Wm. Carey Jones having contracted with Don Augustin Alviso for the purchase of the half of the Rancho de los Serritos, and Don Charles B. Strode having purchased the other part of Don Tomas Pacheco, and the said Alviso and Jones having annulled their contract for a certain piece of land, described below, and the said Strode and Alviso having agreed to a division of said rancho *je se libra*,
179 said agreement under this contract, said Strode shall have, for the part purchased from Tomas Pacheco, all the land situated to the north of a certain ditch, which passes by the house of Tomas Pacheco. and the lines are: From the Arroyo de la Alameda, following the ditch until it reaches the sausal, (clump of willows,) where it ends; from thence it follows to the point of the sausal in the direction of Union city; from the point of this sausal, in the nearest direction to the high hills; from there, along the edge of said hills, as far as the bay; thence along the bay to the mouth of the Arroyo de la Alameda, and up said arroyo as far as the place where the line commences in said arroyo; said Alviso has all the land situated to the south of said ditch, including the hills, of the part of said Strode; two parts of land have been sold heretofore, one to A. C. Smith, and the other to Jones, Tompkins & Strode; of the part belonging to Augustin Alviso, he cedes and sells to said Wm. Carey Jones, in consideration of annulling the contract of sale, dated August 16th, '52, also for the sheep and mares, (wild,) the following piece of land, as follows:
180 All the land which is between said ditch and the south line of said rancho, and between the road from Union city to the mission of San José and the Arroyo de la Alameda, as also the piece of land called the Proterito, (little field,) now occupied by L. S. Beard, situated between the house of said Alviso and the bay, being all that which is enclosed by said Beard, and these presents answers

for an agreement between the aforesaid parties. In witness whereof they sign their names and affix their seals September 30th, 1852.

(Signed) C. B. STRODE. [SEAL.]
WM. CAREY JONES,
By C. B. STRODE. [SEAL.]
AUGUSTIN his + mark. ALVISO. [SEAL.]

It has been agreed that L. S. Beard shall have the aforesaid piece of land called the Potrerito in possession until the month of February, 1853.

WM. CAREY JONES,
By C. B. STRODE.
AUGUSTIN his + mark. ALVISO.

STATE OF CALIFORNIA,
County of Santa Clara, ss:

181 S. O. Houghton being duly sworn, deposes and says that the above is a true and correct translation from the Spanish into the English language of the paper hereto annexed, marked "A."

S. O. HOUGHTON.

Subscribed and sworn to before me this 10th day of February, A. D. 1857.

JNO. B. HENSON, *Clerk.*
[SEAL.] By LEVI P. PECK, *Deputy.*

"A."

Habiendo Wm. Carey Jones contratado con D. Augustin Alviso por la compra de la mitad del rancho de los Serritos y D. Carlos B. Strode comprado la otra parte de D. Tomas Pacheco, y haviendo d'ho Alviso y Jones anulado su contrata por uncierto pedazo de tierra que abajo se espresa y haviendo d'ho Strode y Alviso convenido en una devision de d'ho rancho je se lebra d'ho convenio bajo esta contrata: d'ho Strode tendra por la parte comprado á D. Tomas Pacheco toda la tierra cituada con direccion al norte de un cierto vallado que corre por la casa de Tomas Pacheco, y las lomas son: desde el Arollo de la Alameda siguiendo el vallado hasta que llegue al sausal donde
182 concluye, de alli se sigue á la punta del sausal en direccion á Union city, de la punta de este sausal en la direccion mas costa á las lomas altas de alli por la orilla de d'hos, lomas hasta la Bahia, de alli con la Bahia á la boca del Arollo de la Alameda y ariba d'ho Arollo hasta el lugar donde empieza la linea en d'ho Arollo, d'ho Alviso tiene toda la tierra situada al sur de d'ho vallado incluso las lomas. De la parte de d'ho Strode dos partes de tierra han sido vendido anterior, una á H. C. Smith y la otra á Jones, Tompkins & Strode, de la parte perteneciente á D. Augustin Alviso, el cede y vende á d'ho Wm. Carey Jones en consideracion de anular la contrata de benta con fecha 16 de Agosto, 52, tambien por las borregas y leguas broncas el

siguiente pedazo de tierra como sigue: toda la tierra que esta entre ante dicho vallado y la linea al sur de d'ho rancho y entre el camino de Union city á la mission de San José y el Arrollo de la Alameda,
como tambien el pedazo de tierra llamada el Potrerito ahora
183 ocupado por L. S. Beard situado entre la casa de d'ho Alviso
y la Bahia siendo todo lo que esta en cercado por d'ho Beard, y estas presentes letras responden por una contrata entre las ante dichas partes y para testigar la presente firman sus nombres y ponen sus sellos.

Setiembre 30 de 1852.

C. B. STRODE. [SEAL.]
WM. CAREY JONES, [SEAL.]
By C. B. STRODE.
his
AUGUSTIN + ALVISO. [SEAL.]
mark.

STATE OF CALIFORNIA,
County of Santa Clara, ss:

On this 30th day of September, A. D. 1852, personally appeared before me, the recorder in and for said county, C. B. Strode, attorney for W. C. Jones, and for himself and Augustin Alviso, both personally known to me to be the persons described in the foregoing instrument, and who acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

Given under my hand and private seal, having no official
[SEAL.] seal provided for this office, the day and year aforesaid.

J. M. MURPHY,
184 *County Recorder.*

Filed for record at 10 o'clock a. m., Oct. 1st, A. D. 1852.
J. M. MURPHY, *Recorder.*

Recorded by—
S. O. HOUGHTON, *Deputy.*

RECORDER'S OFFICE, COUNTY OF SANTA CLARA, CALIFORNIA,
February 10th, A. D. 1857.

I hereby certify that the foregoing, on pages 12 and 3 of this, is a full, true and correct copy of an instrument of record in this office, recorded in book E. of deeds, on pages 233 and 234.

Given under my hand and official seal, at the city of San
[SEAL.] José, the day and year last written.

S. A. CLARK, *County Recorder.*

State of California, county of San Francisco, fourteenth day of October, one thousand eight hundred and fifty-two.

Whereas, on the seventeenth day of the month of August,
185 of this year, Thomas Pacheco and Carlos B. Strode entered
into a contract of purchase and sale of the part of the land belonging to said Pacheco, known by the name of the Rancho del Potrero

de los Seritos, for the sum of forty-five thousand dollars, and that the said Strode has paid the aforesaid sum, which the said Pacheco confesses to have received in cash and notes to his satisfaction: Now comes said Pacheco, in his own and in the name of his heirs, and of any of them who may have right, use or fame to sell, alienate and convey as he sells, alienates, and conveys to said Strode all the right which he the said Pacheco has and may have to sell, alienate, and convey and sell the land aforesaid, that is to say, the undivided half of the same, excepting the part between the following limits: From a stake planted in the edge of the ditch near the corral of Pacheco, and running to the southeast through the middle of a tree, as far as another stake; from thence in a straight line to the corner of the fence, within which is the house occupied by Romero; from this corner, along the line of said fence and beyond it, as far as a high poplar,
186 (the Alamo;) from thence along the edge of the Arroyo de la Alameda upwards until it reaches a point opposite, which is a tree marked with a P, (the same mark being upon the aforesaid stakes;) and from thence in a straight line to the place of commencement, including the house occupied by said Pacheco, and a sycamore tree which is near said house. Said Strode shall respect all the sales and conveyances which said Pacheco may have made prior to this contract, in the land sold. The said Strode does not require of said Pacheco any obligation or responsibility with respect to the titles or possession of said rancho. Wherefore, the said Strode, his heirs or purchasers, shall always retain all the right which the said Pacheco has or may have to the part of the land of the rancho of the Potrero of the Serritos situated in the county of Santa Clara, less the portion as above explained and described, which portion remains for the benefit of the said Pacheco, his heirs, purchasers, executors, or representatives, for the value of five thousand dollars, which amount the said Strode admits as received, discounting it from the forty-
187 five thousand dollars the sum total of this sale, excepting at the same time the house occupied by Nasario Galindo.

In testimony whereof, we have signed these presents with our signatures and seals, the day of the date aforesaid.

(Signed) TOMAS PACHECO. [SEAL.]
CHARLES B. STRODE. [SEAL.]

Signed, sealed, and delivered in presence of the witnesses—
JUAN B. ALVARADO.
ADOLFO SELLMAN.

In the district court of the United States for the northern district of California.

THE UNITED STATES
vs.
TOMAS PACHECO.

It is hereby admitted that the certified copy of deed of partition between Alviso and Strode, hereto attached, dated Sept. 30, 1852,

may be put in evidence without affidavit of the loss of the original, and with the same force and effect as the original deed.

188 2. That the translation of deed from Pacheco to Strode, dated October 14, 1852, may be given in evidence in the same manner, with the same force and effect as if it were the original deed of which it purports to be a translation.

3. That the deed from P. E. Edmondson, sheriff, to H. P. Jones, may be given in evidence in same manner and with the same force and effect as if the judgment and execution mentioned in said deed had been fully proved.

And that further proof of the right of said H. P. Jones to intervene herein need not be given.

It is expressly understood that this stipulation is only to be used on the application to confirm the survey in this case, and for no other person.

SAN FRANCISCO, *Sept.* 15, 1862.

E. J. LAURENCE,
Att'y for H. P. Jones, Intervenor.
J. J. WILLIAMS,
And S. L. JOHNSON,
For Claimants.

SAN FRANCISCO, *Sept.* 24, 1862.

The foregoing documents are admitted without formal proof
189 by the U. S. as evidence binding the claimants and intervenor in their transactions together, but not as evidence affecting the U. S. in the matter of the proper location of the land granted. Such evidence is not competent to bind the government.

WM. H. SHARP, *U. S. Att'y.*

Endorsed: Filed Oct. 27, 1862.

W. H. CHEVERS, *Clerk.*

Opinion approving survey.

THE UNITED STATES *vs.* TOMAS PACHECO. } No. 119.—"Potrero de los Cerritos."—October 29, 1862.

The only objection to the survey in this case is that it includes a small portion of the salt marsh which bounds the shores of the southern part of this bay, and which is subject to occasional overflow.

That this strip, and even more than is embraced within the survey, was intended to be included within the grant, is evident from
190 the diseño. Near the line of the upland, but separated from each by a portion of the marsh, are two cerritos or little hills, which are also delineated on the map, and which are shown to have been intended to be included in the grant. They have always been used for pasturage by the grantee and the mission which formerly occupied them. Tho' at times, when the water is high, they may be

insulated, they are though the greater part of the year readily accessible to cattle. The line of the ——— has been run so as to embrace as little as possible of the marsh land and at the same time include these cerritos.

It has been run from the first to the second, thence along the base of the latter, and thence by a direct line to the upland at the point of beginning.

By this survey the claimant obtains nearly ¾ of a league less than the quantity granted and confirmed to him, and there is excluded a large body of salt marsh which he might very reasonably have claimed.

191 The survey seems to me as favorable to the U. S. as should be expected, and I am of opinion that it ought not to be disturbed.

The objection filed by the intervenors, Jones *et als*, I understand to be withdrawn.

The survey is therefore approved.

Endorsed: Filed October 29, 1862.

W. H. CHEVERS, *Clerk.*

Final decree.

At a stated term of the district court of the U. S. for the northern district of California, held at the court-room in the city of San Francisco, on Friday, the sixth day of Feb'ry, A. D. 1863.

Present: Hon. Ogden Hoffman, dist. judge.

THE UNITED STATES
vs.
TOMAS PACHECO and AGUSTIN ALVISO. } No. 119.

In the matter of the survey and location of the rancho "Potrero de los Cerritos."

192 This cause coming on this day to be heard, was argued by counsel, and thereupon and in consideration thereof, it is ordered, adjudged, and decreed, and the court doth hereby order, adjudge, and decree, that the objections filed to the official survey of the said rancho be, and the same are hereby, overruled. And it is further ordered, adjudged, and decreed, that the said official survey of the lands claimed in this case be, and the same is hereby, approved. The survey hereby approved contains ten thousand six hundred and ten $\frac{26}{100}$ (10,610 $\frac{26}{100}$) acres of land, being the same made by William J. Lewis, deputy surveyor, in October and November, 1860, a duly certified plat of which was filed in the clerk's office of this court on the 28th day of January, 1861, and is hereunto attached as a part of this decree, marked "Approved February 6th, 1863, Ogden Hoffman, dist. judge."

OGDEN HOFFMAN, *Dist. Judge.*

Endorsed: Filed February 6, 1863.

W. H. CHEVERS, *Clerk.*

(Here follows plat, annexed to decree, page 192.)

No.	Course.	Dist.	No.	Course.	Dist.	No.	Course.	Dist.	No.	Course.	Dist.	No.	Course.	Dist.	No.	Course.	Dist.
1	S. 71⅜ E.....	4.70	38	S. 44½ E.....	5.70	75	S. 45½ W.....	8.00	112	N. 64⅜ W...	2.50	149	S. 2 E.....	4.60	186	S. 83 W.	2.50
2	S. 13½ W....	11.00	39	S. 7 E.....	6.60	76	S. 73½ W.....	18.50	113	S. 60⅜ W.....	2.30	150	S. 57⅛ E.....	3.00	187	N. 45½ W.	7.20
3	S. 40 E.....	3.20	40	S. 39⅜ E.....	3.20	77	S. 33 W.....	9.46	114	S. 17½ W.....	2.60	151	N. 58⅜ E.....	1.70	188	S. 56 W.	7.00
4	S. 88⅜ E.....	4.00	41	S. 64½ E. ...	9.30	78	S. 10½ W.....	9.50	115	S. 44⅜ E.....	2.40	152	S. 15⅜ E.....	9.30	189	S. 86 W.	2.00
5	N 51⅜ E.....	4.00	42	S. 3⅜ E.....	10.00	79	S. 70½ W.....	12.86	116	S. 26 E....	8.00	153	S. 11½ W.....	4.60	190	N. 67⅜ W.	6.00
6	N. 11⅜ E.....	9.40	43	S. 52½ E.....	34 00	80	S. 89 W.....	12.30	117	S. 28⅛ W.....	4.00	154	S. 8⅜ E.....	5.00	191	N. 58½ W.	7.00
7	N. 70½ E.....	6.90	44	N. 3⅛ E.....	25.00	81	S. 13 W.....	15.00	118	S. 49⅛ E.....	3.70	155	S. 19⅜ W.....	8.50	192	S. 64½ W.	5.50
8	S. 72½ E.....	12.91	45	S. 57⅛ E.....	15.00	82	S. 12⅜ W.....	4.00	119	S. 19⅛ W.....	4.00	156	S. 46⅜ W.....	5.00	193	N. 38⅜ W.	7.00
9	N. 72½ E.....	10.00	46	N. 84⅛ E.....	11.00	83	S. 10⅛ E.....	9.00	120	S. 62⅛ W.....	4 00	157	S. 35 W.....	4 30	194	N. 34 E.	7.00
10	N. 13⅜ E.....	3.60	47	S. 43⅜ E.....	31.19	84	S. 20½ W.....	20.81	121	S. 24 W.....	10.93	158	N. 66½ W.....	8.20	195	N. 24¼ W.	4.00
11	N. 7⅛ W.....	7.00	48	S. 33 W.....	6.00	85	S. 44⅜ W.....	7.30	122	S. 54 W.....	7.00	159	S. 50⅛ W.....	7.00	196	S. 88 W.	7.00
12	N. 3⅜ E.....	26.37	49	S. 30½ E. ...	9.40	86	S. 69½ W.....	3.70	123	S. 17 W.....	4.84	160	S. 48 E.....	9.35	197	N. 35 W.	1.40
13	S. 88½ E.....	7.50	50	S. 59⅛ E.....	16.38	87	N. 79⅜ W.....	5.88	124	S. 39⅛ E.....	5.70	161	S. 75½ E.....	6.50	198	N. 14⅜ E.	8.80
14	N. 84⅜ E.....	10.00	51	S. 27 W.....	4.70	88	N. 52½ W.....	8.00	125	S. 36⅛ W.....	10.50	162	S. 35½ W.....	7.00	199	N. 6 W.	15.00
15	N. 53 E.....	3.50	52	S. 9⅜ E.....	5.10	89	N. 36⅜ W.....	6.00	126	N. 89 W.....	10.22	163	S. 50⅜ W.....	24.00	200	N. 65½ W.	10 00
16	N. 0⅜ W.....	8.60	53	S. 87½ E.....	10.56	90	S. 69 W.....	11.73	127	N. 24⅜ W.....	9.00	164	S. 58⅜ W.....	9.00	201	N. 30½ W.	7.86
17	N. 47⅜ E.....	3.00	54	S. 76⅛ E.....	4.00	91	N. 47½ W.....	8.00	128	N. 51⅜ W.....	4.00	165	S. 39 W.....	7.00	202	N. 11½ W.	3.00
18	S. 28⅝ E.....	3.00	55	N. 82⅜ E.....	8.30	92	S. 47 W.....	5.00	129	N. 88 W.....	6 00	166	S. 16⅛ W.....	3.80	203	S. 89½ W.	6.00
19	S. 3 E.....	10.70	56	S. 68 E.....	4.00	93	S. 43½ E ...	3.50	130	S. 29⅛ W.....	5.70	167	S. 2½ W....	5.50	204	N. 45 W.	33.41
20	S. 21 E...	10.00	57	S. 1¼ W.....	9.40	94	S. 77 W.....	6.00	131	S. 66⅜ W.....	2.90	168	S. 38½ E.....	7.00	205	N. 37½ E.	3.00
21	S. 7½ E.....	7.50	58	S. 54⅜ E.....	10.50	95	N. 67½ W.....	3.40	132	N. 49⅛ W.....	4.00	169	S. 67⅜ E.....	5.00	206	N. 1 W.	20.00
22	S. 5⅜ E.....	9.60	59	N. 62½ E. ...	4.50	96	N. 89⅜ W.....	3.40	133	S. 54⅛ W.....	5.00	170	S. 42¼ W.....	7.00	207	N. 16½ W.	17.87
23	N 60½ E.....	4 20	60	N. 36 E.....	8.00	97	S. 52⅜ W...	4.00	134	N. 63½ W.....	5.00	171	S. 1½ W.....	7.00	208	N. 33 W.	8.60
24	N. 32 E.....	27.20	61	N. 11⅜ E.....	11.75	98	N. 66½ W.....	2.00	135	N. 49⅛ W....	3.50	172	S. 65½ W.....	3.50	209	N. 6 E..	13.00
25	N. 24½ W ...	8.80	62	N. 39½ E.....	9.00	99	S. 86½ W.....	5.00	136	S. 81⅜ W.....	10.00	173	N. 36½ W	12.00	210	N. 27½ E..	3.00
26	N. 3½ W.....	5.60	63	N. 18 W.....	6.47	100	N. 20⅜ W.....	5.00	137	S. 47⅜ W.....	2.70	174	S. 85½ W.....	3.70	211	N. 46⅜ E.	10 00
27	N. 88½ E.....	1.80	64	N. 53½ E.....	14.10	101	N. 67 W.....	2.80	138	S. 14⅜ W.....	5.00	175	S. 14.....	3.00	212	N. 8 W.	11.70
28	S. 50½ E.....	36.00	65	S. 21⅜ E.....	11.86	102	N. 1¼ W.....	4.00	139	S. 53⅜ W.....	4.60	176	N. 76½ W.....	10.00	213	N. 54¾ W.	46.00
29	S. 9⅜ W.....	9.70	66	S. 16½ E.....	10.47	103	N. 61 W.....	2.40	140	S. 21½ W....	11.00	177	S. 76½ W.....	18.49	214	N. 10 W.	6.50
30	S. 64½ E.....	5.10	67	S. 64½ E.....	13.18	104	S. 55 W.....	6.00	141	N. 87⅜ W.....	4.00	178	S. 66 W.....	8.00	215	N. 24½ E.	6.40
31	N. 72½ E.....	22.37	68	N. 81½ E.....	6.40	105	S. 3⅜ E.....	1.40	142	S. 65⅛ W.....	6.00	179	N. 71½ W.....	2.40	216	N. 13½ W.	4.70
32	S. 71⅜ E.....	4.80	69	N. 40 E.....	3.90	106	S. 36 E.....	3 30	143	N. 71½ W.....	3.00	180	N. 34 W.....	7.00	217	N. 13¾ E.	5.00
33	N. 81½ E.....	4.30	70	N. 86⅜ E.....	6 70	107	S. 8⅜ W.....	2.60	144	N. 45½ W.....	14.70	181	N. 55 W.....	21.00	218	N. 5 W.	7.00
34	N. 70½ E.....	7.00	71	S. 95 E.....	2.10	108	S. 44⅜ E.....	2.00	145	S. 65½ W.....	8.76	182	N. 18 W.....	5.00	219	N. 13⅜ E.	100.00
35	S. 43⅜ E....	18.53	72	S. 79½ E.....	13.00	109	S. 0⅜ E....	8.40	146	N. 41 W.....	2.00	183	N. 20½ E.....	5.00	.....	.....	.....
36	N. 82 E.....	18.15	73	S. 17 E.....	4.00	110	N. 89½ W.....	3.00	147	N. 37⅜ W....	5.30	184	N. 35½ W.....	10.00	.....	.....	.....
37	S. 80 E.....	5.50	74	S. 6¾ W.....	4.30	111	S. 43¾ W.....	4.00	148	S. 63⅜ W....	3.40	185	N. 50¾ W.....	16.00	.....	.....	.....
		354.93			389 66			247.16			208.25			282.94			410.24
																	282.94
																	208.25
																	247.16
																	389.66
																	354.93
																	1,873.18

Aggregate: 23 mls. 33 chs. 18 lks.....

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California, November 19, 1860.

The field-notes of the rancho Potrero de los Cerritos, from which this plat has been made out, have been examined and approved, and are on file in this office.

(Signed) J. W. MANDEVILLE,
U. S. Surv'r Gen'l, Cal'a.

U. S. SURVEYOR GENERAL'S OFFICE,
San Francisco, California.

I hereby certify this to be a full, true, and correct copy of the original plat on file in this office of the official survey of the rancho "Potrero de los Cerritos," finally confirmed to Thomas Pacheco and Augustin Alviso.

In witness whereof, I have hereunto signed my name and caused [L. S.] the seal of this office to be affixed this the 23d day of January, 1861.

J. W. MANDEVILLE,
U. S. Surv'r Gen'l, Cal'a.

193 *Order granting appeal to Supreme Court in behalf of U. S.*

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Friday, the sixth day of February, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The honorable Ogden Hoffman, district judge.

THE UNITED STATES
v.
TOMAS PACHECO *et al.* } No. 119.

This cause having come on to be heard on objections to the survey and location by the surveyor general of the U. S. for California of the land heretofore confirmed to the claimants, and the court having by its final decree, made and entered this sixth day of February, A. D. 1863, approved the location and survey made by said surveyor general, now, on application of W. H. Sharp, esq., U. S. att'y, it is ordered that an appeal in behalf of the United
194 States from said final decree be, and the same hereby is, granted, and that a certified transcript of the record in said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed February 6th, 1863.

W. H. CHEVERS, *Clerk.*

195 I, William H. Sharp, district attorney of the United States for the northern district of California, by virtue of the power vested in me by law, to wit, under the act of the Congress of the United States entitled "An act relative to appeals to the Supreme Court of the United States," approved August 6, 1861, do hereby

certify that the annexed and foregoing one hundred and ninety-four, (194,) consecutively numbered pages, together with the plats and maps also annexed hereto, exhibit a full, true, and correct transcript of the record and proceedings in the case of the United States *v.* Tomas Pacheco *et al.*, and numbered 119 on the docket of land cases in the district court of the United States for the northern district of California, and that the original papers and maps from which the said transcript has been made were duly delivered to me by the clerk of said district court, at my request, for the purpose of having them transcribed; and the same are of record and on file in the clerk's office of said district court.

In testimony whereof, I have hereto set my hand and private seal, [SEAL.] at San Francisco, in the district aforesaid, this twentieth day of February, A. D. 1863, and of our independence the 87th.

WM. H. SHARP,
U. S. Att'y, Northern Dist. of Cal'a.

Filed May 26, 1863.

In the Supreme Court of the United States.

No. 130.

DECEMBER TERM, 1864.

UNITED STATES, appellants, *vs.* TOMAS PACHECO *et al.*	Appeal from the decree of the United States district court for the northern district of California.

STATEMENT OF THE CASE.

This case is an appeal from the decree of the district court of the United States for the northern district of California, confirming the survey and location of the grant made by the Mexican government of California to Tomas Pacheco and Augustin Alviso, March 23, 1844, for three leagues of land, situated on the east side of the bay of San Francisco, a little north of what is called the head of the bay.

In the decree of concession of that date Governor Micheltorrena "declares citizens Tomas Pacheco and Augustin Alviso owners in fee of the location known by the name of 'Potrero de los Cerritos,' bounded in the direction to San José, on the Sanjon de Alisos, to the north on the arroyo de la Alameda, and to the west on the bay, *in extent three square leagues*, (sitios de ganado mayor,) a little more or less. Let the corresponding title be issued, &c." (Printed Record, pp. 15, 16.) The titulo or definite title, however, was not offered in evidence before the land board—only the expediente, in connexion with some oral testimony.

The board, on the 14th of February, 1854, confirmed the claim in these words: "The land of which confirmation is hereby made is that known by the name of the Potrero de los Serritos, now in the occupancy of said claimants, situated in the county of Santa Clara, and bounded as follows, to wit: on the west side by the estero or bay, on the north side by the arroyo de la Alameda, on the south and towards

the mission of Santa Clara by the Sanjon de los Alisos, and *on the east or rear side by a line parallel to the front side* on the estero or bay, and *at such distance from it as to include in said boundaries two square leagues of land;* reference also being had for the location of the said premises to the maps in the traced copy of the expediente filed in this case. *The land hereby confirmed containing two square leagues of land and no more.*" Printed Record, p. 25.

On appeal to the district court, further testimony was taken, and the original grant was put in evidence. Whereupon the decree of the land board was reversed and the following decree entered: "The court is of opinion that the *whole claim is valid*, and that the *same be and is hereby confirmed to the extent of three square leagues.* The land of which confirmation is made is known by the name of the 'Potrero de los Cerritos,' and is bounded on the side of the mission of San José by the Sanjon de los Alisos, on the north by the arroyo de la Alameda, and on the west by the bay, containing about three square leagues. For more particular description reference is made to the grant, map, and the expediente referred to therein, copies of which are filed in the said transcript." Printed Record, p 26–35.

On appeal to the Supreme Court, this decree of the district court was affirmed, (Ibid., p. 38.) and subsequently the survey in question was made by the surveyor general of California.

On the 17th day of December, 1860, proceedings were initiated under the act of June 14, 1860, by Calhoun Benham, United States district attorney, to correct the said survey, and on the 2d of January, 1861, Calhoun Benham, United States attorney, *appeared for the United States*, and Johnson & Rose and John J. Williams appeared for the claimants, and no other party appearing, it was ordered that the default of all parties not appearing as aforesaid should be entered. Printed Record, p. 39–41.

On the 4th of March, 1861, the default was opened, and H. P. Jones was allowed to intervene, (Ibid., p. 42,) and his ground of intervention stated. (Ibid., p. 52.) On the 9th of March the United States filed the following exceptions to the survey:

"1st. That said survey is erroneous in this—that in running the west line of said claim upon the bay of San Francisco at least two leagues of salt land are left out and excluded from the boundaries of said claim,—thereby, in

order to obtain the amount confirmed by the decree, taking and embracing two leagues on the east and interior of good arable land.

"2. That in running said west line upon said bay, after excluding said two leagues of salt land, the surveyor run said line so as to embrace and include about one league of salt land. and thereby taking in two islands, located far below high tide-water, and which are surrounded by the waters of said bay.

"Therefore the United States pray that said survey be set aside for the reasons above set forth, and for an order directing said surveyor general to cause a resurvey of said land, in conformity to the intent and meaning of said final decree, so as to embrace all or more of said salt land so overflowed and surrounded by the tide-waters of said bay." Printed Record, pp. 42, 43.

No testimony was taken in support of the first exception, as none was needed, except what already appeared in the record But testimony was taken in support of the second, evidently in the interest of the two settlers on the two cerritos included in the survey. Printed Record, p. 43–60.

On the 9th of July, 1862, H. P. Jones obtained leave to file, and did file, an amended intervention setting forth his title more fully, and alleging that the survey excluded 2,700 acres of land belonging to him, between the west line of the survey and the margin of the bay. Wherefore the said H. P. Jones excepts to the westerly line of said survey, because—

1. Said westerly line does not follow the calls of said grant, which is *the margin* of the bay of San Francisco.

2. That it excludes 2,700 acres of land conveyed by said original grantees and confirmees to intervenor.

3. That said survey does not embrace the quantity of land granted to said Alviso and Pacheco, but that it falls short of the same 2,700 [acres?]

4. Because about 2,700 acres of land lies between the westerly line of said survey and *the margin of the bay*, which is not embraced in any other grant.

Therefore petitioner prays that said survey may be so amended as that said westerly line shall follow down the Alameda creek to the bay of San Francisco; thence along the margin of the bay to such a point as that a line running from the margin of the bay to the point of a range of hills marked on the map as Los Cerritos will embrace 2,700 acres

more of land, *provided there shall be that amount of land* lying between said westerly line of the survey and the margin of the bay, and included in the tract marked on the accompanying map as "C. B. Shode and William Carey Jones, esqrs., 4,635 acres;" and *in case there shall be less* than said 2,700 acres embraced within said boundaries, then that said survey shall follow along the margin of the bay to the point where the division line marked on the accompanying map as "N. 80° 38′ W. (true course,) 108 chains," intersects said bay; thence easterly along said line to the point of said hills marked 'Los Cerritos,' one hundred and eight chains." Printed Record pp. 62, 63.

It will be observed that this objection is coincident with the first exception filed by the United States, to the extent of the title claimed by the intervenor, and involving the same principle. It differs only in the fact that the title of intervenor did not extend to the whole front of the grant on the bay, the ranch having been divided between Alviso and Pacheco by an east and west line running to the bay, one part of which only was claimed by the intervenor, as will appear by the agreement of September 30, 1852, put in evidence by the intervenor, Printed Record pp. 66, 67.

The trouble taken by Jones, the intervenor, to have the default opened as against him, so that he might be allowed to except to the survey; the fact that he filed an exception to the survey and afterwards applied for and obtained leave to file an amended exception, which was filed accordingly, and that the objection was that the survey gave him 2,700 acres less land than he was entitled to, will all be noted in connexion with the fact stated by the court that on the hearing, viz: "the objection filed by the intervenors, Jones *et als.*, I understand to be withdrawn." Printed Record, p. 71.

How this was accomplished, any one acquainted with the mode of doing business in California can readily imagine. It is not to be supposed that he was convinced of his error, except by golden arguments, or by a compromise, by which he was to receive an increased interest in the lands included in the survey, in consideration of withdrawing his opposition to the survey.

When that was done, it was supposed that *all objection* to the confirmation of the survey was removed. Accordingly the court says: "The only objection to the survey in this case is that it includes a small portion of the salt marsh

which bounds the shores of the southern part of this bay, which is subject to occasional overflow. That this strip, and even more than is embraced within the survey, was intended to be included within the grants, is evident from the diseño." (Printed Record, p. 70.) But the court, in making this statement had overlooked entirely the first exception filed by the United States, and supposed that the only exception on the first ground was that taken by the intevenor Jones, who, as is stated, withdrew his objections for, no doubt, satisfactory reasons. But the withdrawal of his objection left the first objection of the United States (the same in principle as Jones's, but more extensive in its application) in full force. The court confirmed the survey in total disregard of the first exception taken by the United States. The United States have appealed, and in this court they renew and insist upon the first exception to this survey taken by them in the court below, viz:

1. "That said survey is erroneous, in this: that in running the west line of said claim upon the bay of San Francisco, at least two leagues of salt land are left out and excluded from the boundaries of said claim, thereby, in order to obtain the amount confirmed by the decree, taking and embracing two leagues on the east and interior of good arable land." Printed Record, pp. 42, 43.

ARGUMENT FOR THE UNITED STATES.

The objection of the United States to this survey is, that it does not follow the calls of the grant, and of the decree of confirmation. Three boundary lines only are given by them—the north line, the south line, and the west line. The fourth line is not given. That can be determined only by the quantity of the grant. We have therefore a base line calling for the bay of San Francisco on the west, and two side lines, the arroyo de la Alameda on the north, and the Sanjon de los Alisos on the south. The fourth line can only be determined by the quantity of the grant, starting from that base and proceeding eastwardly within the two side lines given. Instead of this, however, the whole process has been reversed. The survey is begun *arbitrarily at the east;* and it proceeds westwardly, and stops short of the base line called for in the grant and the decree, leaving between seven and eight square miles of land between the west line of the survey and the bay of San Francisco. Dyer's testimony. Printed Record p. 53, answer 7.

The only error of the decree of the land board was in the matter of *quantity*. It confirmed the title to only *two leagues*, instead of *three*. With that exception, the decree was perfectly correct in point of principle.

The land confirmed by the decree was bounded as follows, to wit: on the west side by the estero, or bay; on the north side by the arroyo de la Alameda; on the south and towards the mission of Santa Clara by the Sanjon de los Alisos; and *on the east or rear side by* [*a*] *line parallel to the front side on the estero, or bay, and at such distance from it as to include in said boundaries two* square leagues of land, &c. The land hereby confirmed contains *two* square leagues of land, *and no more*. Printed Record, p. 25.

When the error, in point of quantity, was corrected, the same formula, however, was not observed in the decree of the district court; but the language of the grant was substituted. Nevertheless, the principle adopted by the land board for determining the locality of the fourth line was correct.

That principle was adopted by this court in the case of *The United States* vs. *Larkin*, 18 Howard's U. S. R., p. 561, in which the opinion was delivered by Mr. Justice Nelson.

Speaking of the grant in that case, he says: "No question appears to have been made as to the practicability of locating the grant, in the tribunals below: nor do we see any ground upon which such a question could have been properly raised in the case.

"The plan or sketch found in the expediente, in connexion with a description given in the grant, furnishes all the materials essential to determine the boundaries. *Three sides are given, and the quantity will guide the surveyor in closing the lines by running the fourth.*"

Again it was applied by this court at the last term, in the great case of *Fossatt* vs. *The United States*, (not yet reported,) in which the opinion of the court was also delivered by Mr. Justice Nelson.

In speaking of the boundaries of the grant in that case he says: "The second answer to the objection is, that *the lines on the grant are not out-boundaries* in the sense of the cases referred to."

"This court said, when the case was before it: '*The southern, western, and eastern boundaries of the land granted to Larios are well defined, and the objects exist by which these limits can be ascertained. There is no call in the grant for a north-*

ern boundary, nor is there any reference to the diseño for any natural object or other descriptive call to ascertain it. *The grant furnishes no other criterion for determining that boundary than the limitation of the quantity as expressed in the third condition.*" And the same opinion is substantially expressed by the court when before it the second time:* *

"But independently of this, and looking at the question as an *original one*, there can be no reasonable doubt about it. The *eastern line* was in dispute between the two adjoining rancheros, (Fossatt [Larios?] and Berreysa), and which was carried before the public authorities for settlement, and there finally adjusted by the agreement of the parties. A line could hardly be made more specific—a boundary settled and fixed after litigation by the adjoining owners. The *western boundary* is a well-known natural object, the Seco Arroyo, a creek. *The southern*, the sierra or mountain range, and *no boundary on the north.* The grant was of *quantity*, and, *of necessity, this boundary must be determined by the limitation of that quantity between the lines given.* It is true, in the second condition of the grant, it is said the judge who shall give possession of the land shall have it measured in conformity to law, *leaving the sobrante, the surplus, to the nation.* But this is a formal condition to be found, for abundant caution, in every Mexican grant. *There is no sobrante here, nor could the judge have measured the grant according to law or ordinance in a way to have any.* Aside, therefore, from the lines being fixed and specific according to the opinion of this court, and of the decree of the court below in pursuance of it, there could be no reasonable doubt upon the question, if an original one." Printed Opinion, Fossatt *vs.* The United States, pp. 5, 6.

In this case, like the two just cited, three lines only are given, and the fourth must be determined by the quantity of the grant. In this case, like the Fossatt case, there is a sobrante clause—reserving the surplus to the nation. But it is inoperative in this case, for the reason given by the court, in the Fossatt case, viz: *there can be none*, because three lines only being given, the fourth can only be determined by the quantity. These considerations establish the fact that *the survey must abut upon each of the three lines given*, beginning with the base and proceeding eastwardly between the north and south lines until the quantity of the grant is obtained. As this principle was applied *against* the United States in the Fossatt case, they confidently invoke its application in this case, in their favor.

The fact that a part of the land that will be embraced by these boundaries is what is called "salt marsh," can make no difference in the application of the principle. It is *a necessity*, resulting from the *number* of the boundaries given in the grant and decree. If *four exterior boundaries*, including a greater quantity of land than the quantity granted, had been given, there might have been room for the application of the doctrine of election. But as the grant cannot be located at all without following strictly the three boundaries given, there is no possible room for the doctrine of election in regard to this location and survey.

But, *the grantees occupied the salt marsh* in the same way that they occupied other parts of the grant more to the eastward, and they also *actually sold this marsh land as a part of their grant*, as appears by their agreement of September 30, 1852. (Printed Record, pp. 66, 67.) If they have *also sold* other land, further east, not included within the boundaries of their grant when properly located, it is the misfortune of those grantees and purchasers, for which this court can furnish no remedy.

But it is said by the court, that "*By this survey the claimant obtains nearly three-quarters of a league less than the quantity granted and confirmed to him, and there is excluded a large body of salt marsh which he might very reasonably have claimed.* The survey seems to me *as favorable to the United States* as should be expected, and I am of opinion that it ought not to be disturbed. The objection filed by the intervenors, Jones *et als.*, I understand to be withdrawn." Printed Record, p. 71.

But the very fact that a claimant, and those claiming under him, are willing to give up "nearly three-quarters of a league of land" for the sake of maintaining a particular location and survey of their grant, is evidence enough that the grant has not been properly located and surveyed. Else why make so great a sacrifice? Men do not act ordinarily (and especially in California) in matters of self-interest, without adequate motives and considerations.

It is idle to pretend that the salt marsh land *could not be granted* by the law of Mexico. The sovereign power of Mexico in the exercise of its authority did grant it, and the irresistible and appropriate evidence of the fact is the grant itself, whose boundaries call for it and necessarily include it. The diseño, by the eastern line drawn from the bottom to the top of the map, shows that the land granted was intended to abut close upon the bay on the west.

So far as the present survey is concerned, it is simply a question whether *less* or *more* of the salt marsh shall be included. A very large part of it is already included, and if it is *legal* to include *that part, it cannot be illegal to include more.*

The other suggestion, that the present survey is very favorable to the United States, is more specious than solid. The present survey substitutes upland, not included in the grant, for the salt marsh excluded by the survey. The salt marsh excluded will not enure to the benefit of the United States, but pass to the State of California, by virtue of the act of Congress granting swamp and overflowed land to California. So far as the salt lands are included in this grant, they cannot pass to the State of California under that act of Congress, and the result is, that the uplands, now included in the survey, will become public lands, the proceeds of which will go into the public treasury. So that, instead of this apparent generosity of the claimants being a benefit, it is really an injury to the United States.

But the propriety or impropriety of the present survey must be determined by entirely different considerations. This view is only presented in answer to the specious suggestion made in the opinion of the court, and it is quite as good and germane to the subject as the suggestion itself.

We ask, therefore, for the rejection of the survey, on the legal ground presented; and in so doing only ask for the application, *in favor of the United States* in this case, of principles which have been so recently applied by this court *against them.*

JAMES SPEED,
Attorney General.
JOHN A. WILLS,
Special Counsel for United States.

Supreme Court of the United States.

THE UNITED STATES, *Appellants,*

vs.

TOMAS PACHECO, *et. al.*

BRIEF OF RESPONDENTS.

Supreme Court of the United States.

THE UNITED STATES, *Appellants*,
vs.
THOMAS PACHECO, *et. al.*

STATEMENT:

1. The respondents contend that the grant in this case was of a specific tract of land, by metes and bounds, and that the final decree of confirmation gave to the claimants *all* the land embraced within the boundaries of the grant. (See Decree, Record, p. 34; Grant Record, pp. 15, 16, 17; U. S. vs. Estudillo, Hoffman's Reports, 206.) The survey should, therefore, have included all the land embraced within the boundaries specified in the decree.

2. But taking the view of the appellants, that the confirmation was of three square leagues, within certain definite and specified boundaries. Under this decree a survey has been made, approved by the Surveyor General and confirmed by the District Court.

The survey, as finally made and confirmed, embraces *two thousand seven hundred and four acres less than three leagues*, the quantity confirmed. (Record, p. 56.)

In the Court below, the U. S. District Attorney filed two exceptions to the survey. (Record, p. 42.)

These exceptions are diametrically opposed.

The purport of the first is that the survey fails to include at least two leagues of salt land, taking in place thereof two leagues of good arable land.

The second is that the survey did include about a league of the salt land and two islands, all below high tide.

In other words, he says in his first exception that the survey should include all these salt lands, and in his second exception that it should not include them because they are below high water mark.

In the court below one of these exceptions must necessarily have been abandoned, and the other only insisted upon.

The record shows that the first exception was in point of fact abandoned, and in the court below it was only insisted that the survey could not include any portion of the salt land over which the tides flowed, nor either of the "Cerritos" which lay within the line of high tide, and to this point the evidence on the part of the United States was mainly directed, as will be seen upon examination of the Record, page 39, and from page 43 to 53.

That this was the objection, and the only objection made before the District Court, is rendered certain by the statement in the opinion of the District Judge. (Record, p. 70.)

It then clearly appears from the Record that in the court below the Government took the ground that "*the bay*" (the western boundary) meant high water mark, and that the survey could not be extended over any of the salt lands over which the highest tides ebbed and flowed.

This objection was overruled, and it was very properly held that all these salt lands, down to the open waters of the bay, might have been included had we chosen to take them to make up our quantity.

The Government *now* contends not that the decree was erroneous because of the objection which it made below, but takes the exactly opposite ground, and says that we ought to have taken all this salt, tide-water land.

I.

It can hardly be necessary to quote authorities to the point that an appellant cannot be heard to stultify himself by repudiating the only objection made by him below, and taking a new one here in direct opposition to it.

In other words, he cannot be permitted to say in the court below that we must not take any of the salt, tide land, and then, on appeal here, that we must take it all, (U. S. vs. Larkin 18, How. 561–2. Kennedy vs. Colton, 28 Barber 59.)

Should this point be deemed well taken, it cannot be necessary further to discuss the case.

II.

But if the objection now set up can be made, and admitting it to be true, as alleged,

"That in running the west line of said claim upon the Bay of San Francisco, at least two leagues of salt land are left out of and excluded from the boundaries of said claim, thereby, in order to obtain the amount confirmed by the decree, taking and embracing two leagues on the east and interior of good arable land." (Record, p. 42.)—

—Yet this objection, as applied to the facts of the case, is in point of law entirely untenable and invalid.

This can he best shown by reference to the official map, taken in connection with the decree.

The grant is bounded on the easterly and south-easterly side by the Sanjon de los Alisos, on the north-easterly side by the Arroyo de los Alameda, and on the west by the Bay.

Within these lines the claimants had the right to locate their quantity, in one body, and in a compact form, wherever they might select. (U. S. vs. Fossatt, 20, Howard 413.)

This they have done. The map shows a compact location, embracing the entire tract up to and including over 2,000 ocres of the salt lands, but stopping 2,704 acres short of the three leagues.

It is now contended on the part of the Government that we should have taken in all these salt lands down to the open waters of the bay, and thus left a corresponding quantity, which is alleged to be two leagues in the South Easterly part of the tract of arable land to the Government and counsel in their argument, assume that the open waters of the bay *must* be made the base, and the survey extended along the other lines until quantity is obtained, and endeavor to sustain this theory by reference to the case of Fossat, decided at the last term.

It is hard to perceive how the principle decided in that case have any application to this.

In that case there were three well defined lines, leaving the fourth side open, and to be determined by the measurement of the quantity, and the court held that these definite lines must be taken and followed in the survey, until a point should be reached on the side lines that would include the quantity.

But in this case all the lines are well defined—viz.: a river, a dry ditch, and the bay. (Record p. 55.)

The claimants could no more be required to make the bay their base than either of the other lines.

They could make the dry ditch their base on the East and run along it, and the river Westerly until their quantity should be obtained, and this is what they have done.

Pacheco's house is, in point of fact, situate close to this ditch, and near the river, and Alviso's house in the Eastern part of the survey, and the survey now contended for would throw the residences of both the grantees out of the grant and upon the public domain, (Record p. 54,) and see official map.

III.

The objection made has so far been discussed as though it were true that there are two leagues of salt land not included in our survey.

Such is the allegation of the objection, and it became incumbent on the Government to prove its truth.

We shall now proceed to show that the evidence produced by them, not only fails to sustain this allegation, but does show that there is no surplus, and that we might have taken in *all* the salt land and still have had only our quantity.

Three witnesses, on the part of the Government, testify on this subject, viz.:

Munzon, (Record p. 50,) estimates the quantity of salt land to the West of our line at from three to four square miles, or say

2,240 acres, all which, and more, could have been taken by us to make up our three leagues, as the survey left us 2,704 acres short.

Dyer & Chipman, (p. 46 and 53 Record,) estimate the quantity of salt land beyond our line at about one league, three-quarters of which could have been taken to make up our quantity.

None of these witnesses claim ever to have measured the land —it is all a mere matter of conjecture in regard to quantity. It is true that Dyer states that he is a surveyor, and that the map which he produces is a correct delineation of the point of salt land embraced in it, but it does not purport to be a survey, is accompanied with no field notes, and he says that part of it was made from observation merely. This, therefore, can have no higher authority than a fancy sketch—a mere conjectural plot, so far as the question of quantity is concerned.

Munzon, who had resided close by the land for eight years estimates it at about half a league, and Chipman & Dyer at about a league.

The mean between these various estimates would be about three-quarters of a league, and if our survey had extended to the open bay and embraced *all* the salt and tide lands, the probabilities are that the entire tract would have fallen within the three leagues. At all events, if it were true that there was any surplus it was the business and duty of the Government to have shown it.

This could have been done by an actual survey about which no question could be made.

The fact alleged they were bound satisfactorily to prove. In this they have entirely failed. They attempt to substitute the guess of witnesses and a sketch made from observation, for what is susceptible of exact proof.

The appellants assign as an error, that if the survey had taken in all these salt lands, there would have been left a surplus of arable land for the Government on the opposite side of the ranch.

This alleged error they are bound to substantiate by the record. It cannot be presumed nor can it be predicated upon mere conjecture.

Every presumption will be made against the alleged error, and if the record presents any question of construction, that will be adopted which would operate in favor of the respondents.

The testimony of Munzon, their own witness, may be taken in the view just stated, to the exclusion of their other two witnesses, and is conclusive of the fact that if *all* the salt lands were included our survey would yet be hundreds of acres short of the three leagues.

But if we add to this the conjectures of Chipman & Dyer, and then from all make the best guess possible, we should either come to the conclusion that there is, including all the salt land, no surplus, or that it is extremely doubtful in regard to the fact.

This court will hardly reverse a judgment upon a *mere doubt*, founded upon three or any other number of *conjectures*.

Finally, we say, that the estimates, conjectures, and opinions of all these witnesses, must as a matter of law, be thrown entirely out of the case, for the reason that the subject in regard to which they testify is not a matter of opinion.

It is a matter of fact, and susceptible of exact demonstration, and upon such a subject *opinion* is not admissible. (1 Greenleaf Er. § 440,)

The adjudged cases in elucidation of this principle are numerous.

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